S. HRG. 101-504

OVERSIGHT HEARING ON THE RESOLUTION TRUST CORPORATION [RTC]

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

PROCEDURES TO BE ESTABLISHED SO THAT THE ASSETS OF FAILED THRIFTS CAN BE SOLD IN A FAIR AND OPEN BASIS, TO INDICATE WHAT SPECIFIC POLICIES HAVE BEEN IMPLEMENTED TO PROTECT AGAINST CONFLICTS OF INTEREST, POLITICAL FAVORITISM AND ALSO A REVIEW OF ALL DEALS DURING 1988, PARTICULARLY IN DECEMBER

OCTOBER 4, 1989

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OVERSIGHT HEARING ON THE RESOLUTION TRUST CORPORATION [RTC]

WEDNESDAY, OCTOBER 4, 1989

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 9:00 a.m., in room SD–538 of the Dirksen Senate Office Building, the Honorable Donald Riegle, chairman of the committee, presiding.

Present: Senators Riegle, Sarbanes, Dixon, Sasser, Sanford, Shelby, Wirth, Garn, D'Amato, Gramm, Bond, Kassebaum, and Pressler.

Also Present: Senator Metzenbaum.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. Let me invite the Treasury Secretary, the Secretary of Housing and Urban Development, and Alan Greenspan to come to the table in the form of Panel 1, if they would at this time. We welcome you all.

Later on in the morning we will be hearing from William Seidman.

I want to announce at the outset that, as is generally known, we have a joint session of Congress today and the two Cabinet Secretaries of course must be present and will have to leave on or about 10:30 for that reason. So that is why we have moved the hearing up this morning. I appreciate everybody's cooperation in moving it to an earlier hour.

I was just explaining to Secretary Brady that the Finance Committee was in going strong on reconciliation at 2:30 in the morning last night. So we are—early this morning. We are sort of going into the 24-hour work schedule around here. I hope we are getting some good things done in the process.

Also, let me say I want to announce this morning that we will be voting on three nominations, and we will conduct a rolling vote on that. Richard Breeden, to be Chairman of the Securities Exchange Commission; Barbara McTurk, to be Superintendent of the Mint at Denver; and John Martino, to be Superintendent of the Mint in Philadelphia.

And so we will as we establish a quorum by voting as we go on those nominations. I know of no objection to any of them, and we very much want to get them reported out today.

Now, let me just also indicate to my colleagues I am going to summarize my opening comments and put my full statement in the

record. I know members will all have comments to make before we start, but I would just ask that we make summary comments this morning so we can get to our witnesses at the earliest point.

As we know, this is the first oversight hearing on the Resolution Trust Corporation. I don't recall a time when we have had a more important panel of top Government officials before this committee, or any committee, than we see here now. We seldom have two Cabinet officers seated at the table at one time, and of course in addition to that we now have the Chairman of the Federal Reserve.

There are a number of issues that will be discussed this morning. Certainly we are very interested in understanding what procedures you are establishing, so that the assets of failed thrifts can be sold in a fair and open basis, and in a manner that allows potential bidders to know what the story is and to get into the process on an equal footing with anyone else who may have an interest.

Also, it is important that you indicate to us what specific policies have been implemented to protect against conflicts of interest, political favoritism, or any other problems of the kind that we sometimes see in government, and have certainly seen in the past in the Department of Housing and Urban Development. Secretary Kemp yesterday announced a series of internal reforms to try to deal with that problem. I would like to know what steps you are taking to avoid those kinds of problems in the RTC.

Also, we are interested in hearing about the strategic plan that you are putting out for public comment, to give us what sense you can of the priorities and the policies of the Board that will form the plan's basis.

Next, as you know, the law as was passed mandates an RTC review of all of last year's deals, particularly those that were done in the rush in December but also throughout the year 1988. We are very much interested in the progress that has been made on that. We would like to hear whatever you can tell us in terms of your plan to move forward with a systematic review of all of those things.

Finally, I want to raise an issue from this morning's Washington Post, which I am sure everyone here is familiar with. It talks about some problem that may have arisen with respect to trying to use the money in the past fiscal year to resolve case problems, and it sounds as if things didn't go as smoothly as they might have. I would like to see what light can be shed on that and also have an indication as to whether or not there is any sign that we are going to need more money than what was in the legislation.

I know we exchanged letters several weeks ago prior to the wind-up of the legislation, but you have now had a chance to take a much tighter and closer look. If there is any indication that any of you see that additional resources may be needed beyond what we have provided, we would like to get some sense of that today.

So with that, let me yield to Senator D'Amato, and we will go back and forth for brief opening comments.

[The complete prepared statement of Chairman Riegle follows:]

STATEMENT OF DONALD W. RIEGLE, JR.
ON THE RESOLUTION TRUST CORPORATION
October 4, 1989

This morning we will hold the first oversight hearing on the Resolution Trust Corporation. I cannot recall any time since I have been in Congress that we have had such an impressive array of government officials on one panel. We will be hearing from the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Housing and Urban Development and the Chairman of the Federal Deposit Insurance Corporation. These officials constitute the current members of the Oversight Board (although we are waiting for the President to nominate two additional persons to that Board), plus the Chairman of the RTC itself.

As FDIC Chairman Seidman has stated, the Oversight Board is the mind and the FDIC is the body of the RTC. It is extremely important -- and we want to make absolutely sure -- that they work effectively together.

The RTC soon will be one of the largest financial enterprises in our country. The Administration has estimated that up to $500 billion in thrift assets will pass through the RTC pipeline and some analysts in the private sector have suggested that the real number will be closer to $900 billion.

The management decisions made by the Resolution Trust Corporation will be felt in the capital markets and real estate markets throughout the country. Real estate markets will be affected in many ways. Homeowners and investors are worried about potential dumping that could adversely affect property values. Mayors of southwestern cities are worried that if the RTC delays payment of property taxes it could play havoc with their local budgets. The timing and strategy of asset disposition is extremely important.

As far as operational goals, the RTC's procedures for bidding on failed thrifts and their assets must be fair and open. Absolute fairness is vital to the overall success of the program. Any person who wants to bid on a piece of property should be allowed

to do so, on the same terms as every other bidder. This bidding process must be established in a timely fashion.

On September 8, the RTC announced it would dispose of five thrifts with total liabilities of about $12 billion. At this hearing we will give our witnesses the opportunity to fully explain the process the RTC used to solicit bids for these thrifts. Some concern already has been expressed to the Committee that of the 43 private investors invited to bid by the RTC, 38 were from the old FSLIC National Marketing List. If there was a problem with favoritism at the FSLIC, as some have alleged, using the old FSLIC list gives at least the appearance of perpetuating that alleged unfairness.

Our witnesses today also have been asked to address what specific policies have been implemented to protect against conflicts of interest, political favoritism, and bribery by employees and agents of the RTC and the Oversight Board. The interim statement of ethical standards the RTC published last week contained no express provision to prevent influence-peddling by RTC contractors. The Committee is especially interested in the views of Secretary Kemp on this subject since he has been working to resolve problems of this nature at HUD for several months now. I want to note, however, that the potential problems at RTC dwarf the substantial problems the Secretary has thus far encountered at HUD.

During deliberations on the thrift bill, Treasury Department officials stated that the RTC would be able to "hit the ground running." We understand that a draft of the RTC's strategic plan will be put out for public comment by the Oversight Board very shortly. This hearing should provide us with an opportunity to discuss the priorities and policies of the Board that will form the basis of that plan.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 also mandates that the RTC conduct a thorough review of last year's year-end deals. We are keenly interested in the progress made on that review and, specifically, what cost-

savings have been obtained or are anticipated. The Committee also will want to hear what procedures have been adopted to ensure that the best possible deals from the taxpayers' perspective are made in the future.

Finally, the Committee will want to hear how the RTC has been spending its money, and whether you feel the amounts available are adequate to the task. Published reports indicate the RTC was prepared to spend up to $7.9 billion to resolve just the five big problem thrifts that are currently up for bid. Another $8.5 billion was loaned to 150 thrifts to replace high-cost borrowings. A Treasury Department official has characterized this $8.5-billion loan as a "down payment on filling the hole" at these thrifts. Given that RTC's current caseload includes over 250 thrifts, and at least 200 more thrifts are destined to come under RTC's jurisdiction, it seems a good time to ask all of our panelists if they are still confident that the recent legislation provides an adequate level of funding.

Again, I would like to thank our panelists for being with us this morning and for the important work they are doing.

Senator D'AMATO. Mr. Chairman, I am going to submit my statement for the record as if read in its entirety. I am interested in hearing our distinguished panel.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, let me join you in welcoming our most distinguished panel of witnesses. I wish we were all here to discuss more pleasant topics than how we will deal with billions and billions of dollars of Federal liabilities.

Mr. Chairman, I know you are aware that this oversight hearing begins an effort that we all realized would be necessary when we formulated the thrift legislation. Passage of FIRREA was the point at which we, the Congress and our colleagues in the executive branch and the independent agencies, began the long journey out of the jungle of the thrift industry fiasco. As we all know, Congress could not waive a magic wand and make the problem go away. Now the hard work begins.

For many years to come, the Resolution Trust Corporation, the RTC Oversight Board and the Congress—this Committee in particular—must be devoted to making the resolution and asset disposition process work. The RTC Oversight Board is charged with a tremendous responsibility to the taxpayers of America who have, unfortunately been tapped to pay the enormous bill that the thrift fiasco ran up.

As large as the task of the Oversight Board is, its members have something to be thankful for. They do not have the RTC's job. Mr. Chairman, FIRREA's direction to the RTC is a model of legislative craftsmanship. It says, in effect, maximize all the good things, minimize all the bad things and do everything else that needs to be done. (That is Section 501(b)(3)(C), Mr. Chairman.) Mr. Seidman, good luck.

Seriously, Mr. Chairman, we all know that we turned to a reliable hand when we made the FDIC the sole agent of the RTC. Chairman Seidman has enormous new responsibilities and a task that would daunt most of us. I hope that FIRRE also gave him the horses to do the job. The Oversight Board is certainly a composite of the best talent that the Government has so the RTC has good supervision and hopefully a clear mandate to save the taxpayer as much money as possible.

I assure the Board and Mr. Seidman that I will do my best to cooperate in this enormous and important effort.

The CHAIRMAN. Thank you.

Senator Shelby.

Senator SHELBY. Mr. Chairman, I have an opening statement I would like to submit for the record, and I would like to observe, as I told Chairman Greenspan earlier at the table, that we very seldom have not just three but four people in the room, three at the table, of your Cabinet status and then Chairman of the Federal Reserve Board and then Chairmen of the FDIC and the Resolution Trust Corporation. Perhaps we should lock the door because we could solve some problems here today—the Third World debt through Nick Brady, housing through Jack Kemp, and, Mr. Chairman, the money supply and interest rates through you, and sell all

the property through Bill Seidman—and we would have some good news for Christmas.

STATEMENT BY SENATOR RICHARD SHELBY

Senator SHELBY. Mr. Chairman, I commend you for calling this hearing and assembling the RTC Oversight Board here this morning.

Mr. Chairman, the RTC has been in business for slightly less than 2 months. Consequently, there is not much of a track record to evaluate. However, I do not believe that an oversight hearing is premature. On the contrary. It is at this stage that you will do your most important work. It is at this time that you must establish the policies, set the guidelines, create the systems, and hire the staff. Your success at this time will determine your success, and the integrity of the RTC, later on.

The RTC is charged with disposing of approximately $400 billion in assets, a task of unprecedented magnitude. In order to accomplish this herculean task, the RTC is instructed to contract with the private sector, whenever possible. While this will ideally provide expertise and efficiency unparalleled in the Government sector, it also entails the delegating of significant responsibility. RTC oversight will be crucial. The S&L crisis and the recent prob lems at HUD are expensive evidence of what can happen when the fox is guarding the henhouse. The RTC and its task of disposing of $400 billion in assets cannot afford the luxury of hindsight—it must set up adequate oversight and accounting systems right from the start.

I have reviewed the minimum standards for ethical conduct that will serve during the interim period. I find the stringency of these standards encouraging. Gentlemen, I appreciate the difficulties of the job ahead of you. I hope that you will maintain an open working relationship with Congress and other parts of the administration in order that we may assist you in seeing that this resolution is handled efficiently, ethically, and cost-effectively.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Shelby.

Senator Gramm.

Senator GRAMM. Mr. Chairman, I will just wait till we ask questions.

The CHAIRMAN. Very good.

Senator Wirth.

Senator WIRTH. I will pass.

The CHAIRMAN. Very good.

With that, let me initially call on the Treasury Secretary, Nicholas Brady, who serves as Chairman of the Oversight Board of the Resolution Trust Corporation. We are very pleased to have you and your colleagues with us this morning. We appreciate the work that is being done, and we would be pleased to hear whatever summary comments you wish to make.

We have got your full statement, and of course we will make it a part of the record.

STATEMENT OF NICHOLAS F. BRADY, CHAIRMAN, OVERSIGHT BOARD OF THE RESOLUTION TRUST CORPORATION, WASHINGTON, DC, ACCOMPANIED BY JOHN ROBSON, CHAIRMAN, INTERAGENCY START-UP COMMITTEE

Mr. BRADY. Thank you, Mr. Chairman. I would appreciate it if my full written statement could be included in the record.

However, I do have a statement which I would like to make. Because of the newness of the RTC and the Oversight Board, I think it is important that we have a starting block.

Chairman Riegle, Senator Garn, and members of the committee, thank you for inviting us here today to discuss the progress made by the Resolution Trust Corporation, RTC, foreshortened, and the Oversight Board over the past couple of months. With your permission, let me summarize the longer written statement that we have submitted for the record.

Only 40 business days have passed since the President signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, called FIRREA, which established the RTC and the Oversight Board, yet we have accomplished a good deal during this very short period of time.

As you pointed out in your letter of invitation, the Administration decided early in the legislative process that the RTC should hit the ground running as soon as the legislation was enacted, and it did. An interagency start-up committee, chaired by John Robson, who is seated on my right, Treasury's Deputy Secretary, planned and coordinated the numerous governmental changes required by FIRREA, but paid particular attention to the startup of both the Oversight Board and the RTC.

In the eight weeks since the President signed the legislation, the RTC and the Oversight Board have continued to tackle the immense job that lies before us one challenge at a time. The Board has met four times, including our first public meeting on September 21 to adopt policies and resolutions addressing some of the initial issues facing the RTC.

Speaking for the Oversight Board, we are pleased with our progress, but have no illusions about the magnitude of the task that lies ahead.

As you know, while the RTC is charged with operational responsibility for the implementation of the thrift cleanup, the Oversight Board sets general policies for the RTC and oversees its operation. As a result, our testimony will describe what the Oversight Board has accomplished in the last eight weeks, focusing on three key subjects—organization and personnel, oversight and auditing, and policy development.

Chairman Seidman will describe the activities of the RTC during this same period.

Before turning to these subjects, however, let me say that we are very pleased with the professional and cooperative relationship that has developed between the Board and the RTC. No joint enterprise of any magnitude is without its healthy frictions, and ours is no exception, but overall we have gotten off to an excellent start.

As an organization with general policymaking and oversight duties rather than operational responsibilities, the Oversight Board

expects to maintain a lean staff, with skilled personnel. While over time the Board expects to fill most positions with its own employees, the startup phase has been largely managed by personnel detailed from other agencies under the leadership of John Robson, the interim President and CEO of the Board.

This has worked out extremely well. One of the real advantages of having department heads serve directly on the Oversight Board has been the ability to make use of some of our best and most experienced Government people. The different missions of our respective departments and the agencies have provided an extraordinary balance of expertise.

We are also pleased to report that the most important step toward developing a permanent staff has been completed. The Board has chosen Daniel P. Kearny as the permanent President and CEO of the Oversight Board. Mr. Kearny brings to this position substantial expertise and relevant experience in both the private and public sector, as we have described in detail in our written statement. We expect Mr. Kearny to move quickly over the coming months to develop a top-notch professional staff while at the same time continuing to draw on agency personnel.

I believe Mr. Kearny takes office today. Is that correct, John?

Mr. ROBSON. Yes.

Mr. BRADY. So this is John Robson's last day, and we thank him for the amount of time and effort——

The CHAIRMAN. Mr. Robson is smiling, and Mr. Kearny is not smiling. [Laughter.]

Mr. BRADY. FIRREA expressly provides that the Oversight Board shall oversee and be accountable for the Resolution Trust Corporation. This is a responsibility that requires continuing review of RTC's reactions and the disposition of RTC funds.

One of our top priorities has been to establish systems and controls to document the need for funds, to trace their use, and to determine that RTC spending and other activities conform with policies established by the Oversight Board. The Oversight Board's policy regarding procedures and documentation for approving RTC financing requests has evolved into a two-step process, which is described in detail in the written statement. I will not repeat these details here, except to emphasize one point.

The approval process does not involve the Oversight Board in specific case resolutions or spending actions. That is prohibited by FIRREA. The only time the Board reviews individual instances of amounts spent is during the auditing phase after the transaction is completed.

The Oversight Board's audit responsibility extends to the overall performance of the RTC, including its operations, management activities, internal controls, and budget performance. Consistent with this role, we have conducted periodic RTC account reconciliations and developed verification requirements for RTC advances. We have also conducted several random onsite audits and are currently developing more comprehensive audit and review procedures.

With respect to priorities for initial spending, at our August 29th meeting the Board adopted a policy that listed the priorities that were to guide RTC outlays during the period ending September 30, 1989. We determined that the RTC should expend funds first to re-

solve institutions and second to accommodate emergency liquidity needs. The final priority was to replace high cost liabilities of RTC thrifts with lower cost loans from the RTC. This immediate reduction in interest cost reduces thrifts' operating losses until the institutions are resolved.

So long as funds are available that cannot be used immediately for case resolutions because the numerous thrifts that are currently insolvent cannot be resolved simultaneously, every dollar that is spent to reduce high cost liabilities creates direct savings for the RTC.

With these procedures and policies in place, the Oversight Board in six separate actions generally authorized an accumulative total of $20 billion to be disbursed to the RTC. All of this $20 billion has subsequently been disbursed to the RTC based on actual spending requests that were consistent with the general authorizations.

We understand that the RTC will provide in its testimony the details about amounts actually spent, including a description of the institutions that receive the funds and for what purposes. So we will not repeat these details here.

Over the last several weeks the Oversight Board has begun to send staff of the Audit and Review Division to verify that appropriate RTC financial controls are in place and that the Oversight Board's policies and procedures are being followed. These random audits provided the basis for discussions with the RTC on how to maintain and improve its funds disbursement and documentation and procedures. The Oversight Board has been satisfied with these discussions.

As Chairman Seidman said recently, the RTC will probably be the most audited agency in the United States' history. That appears to be exactly what Congress intended, and the Oversight Board intends to carry out its auditing and oversight duties under both the letter and the spirit of FIRREA.

The Oversight Board has established a two-track system to develop policies for the RTC. Both tracks involve the Joint Policy Development Task Force, which consists of personnel from both the Oversight Board and the RTC.

The first track is to develop individual policies on an ongoing basis to address various issues that require decisions in order for the RTC to carry forward its work.

The second is to develop an overall strategic plan, as required by FIRREA, for conducting the RTC's functions and activities. This will incorporate individual policies already adopted and at the same time address a broader range of issues confronting the RTC. The strategic plan must be submitted to Congress by the end of the year.

Before discussing some of the key individual policies, let me say a brief word about the strategic plan, which will address all of the major issues confronting the RTC.

The Joint Policy Development Task Force has already begun to prepare a working draft, which the Board decided to publish in the Federal Register for public comment. In the meantime our staff will continue to meet informally with interested groups to ensure that their views are taken into account in adopting the final version.

The CHAIRMAN. Let me just say, not to interrupt at any length, that I think that is a sound move, and I applaud that decision.

Mr. BRADY. Thank you, Mr. Chairman.

Let me now turn to the 12 individual policies adopted by the Oversight Board, which are described in detail in our written statement. These policies are only a beginning, but they do address a number of pressing issues that have confronted the RTC. In the interest of time, I will only summarize several key policies adopted by the Oversight Board in the last two months.

Mr. Chairman, your letter of invitation specifically focused on the ethics issues. Let us assure you that the Oversight Board is as anxious as this committee to protect against conflicts of interest, political favoritism, and other improper actions which might be taken by employees, agents, independent contractors, and all others who perform services for both the Oversight Board and the RTC.

One of the Board's first actions was to establish interim ethics and conflict of interest policies for itself and the RTC pending final regulations.

For its members and those employees who are detailed from other federal agencies, the Board adopted the home agency standard of conduct regulations. For those employees who are not covered by any Federal standards and for employees performing services for the RTC, the Board adopted the FDIC's standard of conduct regulations.

In addition, the Board directed the RTC to take immediate steps to assure that all its contractual and other actions are consistent with applicable provisions of FIRREA.

An Interagency Ethics Task Force was then established to develop final standards of conduct regulations applicable to employees, advisory board members, and independent contractors.

Finally, working with the task force, the RTC developed an interim statement, establishing principles of ethical conduct for independent contractors. This interim statement puts contractors on notice that any of their actions that create even the appearance of a conflict of interest or political favoritism could lead to termination of their contracts. Furthermore, where any of these actions indicate a possible violation of criminal statutes, the matter will be referred immediately to the Justice Department for investigation and, if necessary, prosecution.

In addition to the ethics issues, the Board has focused on case resolution policies involving controversial financing techniques, including long-term asset guarantees, yield maintenance agreements, and substantial equity interest taken by the Government. In particular, the Board adopted two policies addressing both RTC guarantees and RTC equity stakes in resolved institutions.

Because of its shortage of cash, FSLIC resolved cases in 1988 through long-term assistance agreements, such as yield maintenance and asset guarantees that exposed the government to risk of ongoing loss. The Oversight Board's policy will be essentially to stop this practice. This will reduce the complexity of the resolution transactions and avoid the need to structure comprehensive incentive arrangements to protect the ongoing financial interest of the RTC.

EQUITY POSITIONS

FIRREA gives the RTC the authority to take certain kinds of equity or ownership interest in resolved thrifts. Such ownership interest would allow the RTC, and therefore the taxpayer, to share in any extraordinary profits. Equity ownership in a private company by a government agency, however, raises potential conflicts regarding the fair and equitable treatment of competing companies that must also deal with the government agency. It could also expose the RTC to substantial risk of loss over time, similar to the ongoing risk attached to long-term asset guarantees.

To balance these concerns, the Oversight Board adopted a policy directing the RTC to generally avoid taking active equity positions or ones that subject the RTC to ongoing risk or loss. Recognizing the potential for extraordinary profits, however, the policy directs the RTC to consider passive equity positions through the use of warrants or other devices that permit the taxpayer to share in the upside gains, perhaps like the Chrysler bailout, without being exposed to downside losses.

Let me touch on one other policy. The Board recognizes the substantial interest that Congress has in reviewing the 1988 FSLIC transactions to review cost savings. As you know, the RTC must file a report with the Board and with Congress concerning its comprehensive review of these transactions and the steps that can be taken to achieve taxpayer savings.

The Oversight Board's role is to develop and establish overall strategies, policies, and goals in connection with the report. At its first meeting the Board requested the RTC to furnish by September 30th an initial draft of the methodology it intends to use to conduct its review of the 1988 transactions. We expect to receive this draft soon, and we will begin work immediately to finalize the appropriate approach.

Finally, the Oversight Board has carried out a number of activities in connection with the Resolution Funding Corporation, REFCORP, which is charged with raising the $30 billion for thrift resolutions. As required by FIRREA, the Oversight Board has selected two Presidents of Federal Home Loan Board Banks to serve as members of the REFCORP directorate. We have also requested and received a ruling from the Securities and Exchange Commission that REFCORP bonds are exempt from registration under the Securities Act of 1933 and from regulation of trading under the Securities Exchange Act of 1934.

These exemptions will reduce the cost of financing thrift resolutions by narrowing the spread between Treasury securities and REFCORP bonds. We expect REFCORP to issue its first bonds early in this fourth quarter of 1989.

In conclusion, thank you for giving us the opportunity to review the Oversight Board's activities since the passage of FIRREA.

I would like to—in light of the newspaper story which appeared this morning, I would like to say the following. Mr. Chairman, let me say a word about the transactions at the end of last week that were reported in this morning's newspapers.

At the end of last week the RTC decided that it would not consummate five large transactions which they had been working on,

involving $8 billion, by the end of the fiscal year. However, because they were within days of doing so, they wanted to earmark funds in a kind of escrow transaction that would show them as though they had been spent.

The Oversight Board was informed about the general outline of these transactions and cautioned the RTC that expenditures must be in accordance with the Oversight Board policies. We were assured that they were and that they would not cost the taxpayers money. We still have some questions, but under FIRREA we are precluded from intervening in specific transactions.

It should be noted, however, that there were no Gramm-Rudman implications to their decisions.

Consistent with our audit responsibility, on Saturday, September 30th, we also asked for a complete description of their transactions and the reasons why they conformed with the Oversight Board's policies.

However, before receiving a response, the Treasury Department learned that the transaction would require the investment of appropriated funds in interest bearing government securities.

This is prohibited by law. So the transactions could not be completed, in any event.

I don't know whether my fellow members of the Oversight Board have any statements.

[The complete prepared statement of Nicholas F. Brady follows:]

Testimony of the Honorable

Nicholas F. Brady

Secretary of the Department of the Treasury

and

Chairman of the Oversight Board

of the Resolution Trust Corporation

Before the

Senate Committee on Banking, Housing, and Urban Affairs

Wednesday, October 4, 1989

Chairman Riegle, Senator Garn, and Members of the Committee, thank you for inviting us here today to discuss the progress made by the Resolution Trust Corporation (RTC) and the Oversight Board over the past two months. Only forty business days have passed since the President signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), which established the RTC and the Oversight Board, yet we have accomplished a good deal during this very short period of time.

As you pointed out in your letter of invitation, the Administration decided early in the legislative process that the RTC should "hit the ground running" as soon as the legislation was enacted -- and it did. An interagency "ramp-up" committee

chaired by John Robson, Treasury's Deputy Secretary, planned and coordinated the numerous governmental changes required by FIRREA, but paid particular attention to the start-up of both the Oversight Board and the RTC.

As a result, only an hour after President Bush signed FIRREA, the Oversight Board held its first meeting and completed the necessary organizational actions; promulgated its initial policies for the RTC; authorized the first disbursement of RTC funds; and appointed its interim officers and staff. Within hours on the same day, the RTC held its first board meeting as well and swiftly began the case resolution process.

In the eight weeks since these initial actions, the RTC and the Oversight Board have continued to tackle the immense job that lies before us, one challenge at a time. The Board has met four times, including our first public meeting on September 21, to adopt policies and resolutions addressing some of the initial issues facing the RTC. Speaking for the Oversight Board, we are pleased with our progress, but have no illusions about the magnitude of the task that still lies ahead.

As you know, while the RTC is charged with operational responsibility for the implementation of the thrift cleanup, the Oversight Board sets general policies for the RTC and oversees its operation. As a result, our testimony will describe what the

Oversight Board has accomplished in the last eight weeks, focusing on three key subjects: organization and personnel; oversight and auditing; and policy development. Chairman Seidman will describe the activities of the RTC during the same period.

Before turning to these subjects, however, let me say that we are very pleased with the professional and cooperative working relationship that has developed between the Board and the RTC. No joint enterprise of any magnitude is without its healthy frictions, and ours is no exception. But overall we have gotten off to an excellent start.

I. Organization and Personnel

As an organization with general policy making and oversight duties, rather than operational responsibilities, the Oversight Board expects to maintain a lean staff of skilled personnel. To fill these positions, the Board has the ability both to hire its own employees and to draw on the expertise of other government agencies. While over time the Board expects to fill most of the positions with its own employees, the start-up phase has been largely managed by personnel detailed from other agencies.

At our first meeting, we named John Robson to act as interim President and CEO of the Board. He recruited a small group of

senior government executives to begin the Oversight Board's operations immediately.

This has worked out extremely well. One of the real advantages of having department heads serve directly on the Oversight Board has been the ability to make use of some of our best and most experienced government personnel. The different missions of our respective departments and agencies have provided an extraordinary balance of expertise.

The Federal Reserve Board has provided much-needed banking expertise, as has the Treasury Department through the Office of the Comptroller of the Currency. Treasury's new Office of Thrift Supervision has provided hands-on knowledge about the thrift industry, while Treasury personnel have provided overall financial advice in connection with REFCORP borrowing and issues related to working capital. Finally, Congress's wisdom in putting the Secretary of HUD on the Board is now apparent, since we will very much need the counsel of his department in connection with issues involving the disposition of mortgages, consultation with other asset disposition agencies, and setting policies for the disposition of low-and moderate-income housing.

The Oversight Board will probably continue to dip into this pool of agency talent going forward, but we are pleased to report that the most important step toward developing a permanent staff

has been completed: the Board has chosen Daniel P. Kearney as the permanent president and CEO of the Oversight Board.

Mr. Kearney brings to this position substantial expertise and relevant experience in both the private and public sector. In his government role he was Associate Director of the Office of Management and Budget; President of the Government National Mortgage Corporation; Deputy Assistant Secretary of the U.S. Department of Housing; and Director of the Illinois Housing Development Authority. In the private sector he has specialized in real estate finance at both Aldrich, Eastman & Waltch and Salomon Brothers, where he was one of the founders of the Mortgage Securities Department. He has practiced law and has received degrees in business administration, economics, and law.

We expect Mr. Kearney to move quickly over the coming months to develop a top-notch professional staff, while at the same time continuing to draw on agency personnel as necessary.

Appointments to the Oversight Board and the Advisory Boards

As you know, the two independent members of the Oversight Board must still be appointed. This process has been given top priority, and selections have been made pending the Presidential appointment clearance process. Just as soon as it is appropriate

the nominations will be submitted to this Committee for the beginning of the confirmation process.

Likewise, the Oversight Board has begun the process of selecting members for the regional and national advisory boards that will advise both the RTC and the Oversight Board on asset disposition. The Board must appoint five members to each regional advisory board, which will report to the RTC, and the chairperson of each regional board will serve on the national advisory board, which will report to the Oversight Board. The chairperson of the national advisory board must also be appointed by the Oversight Board.

On August 9, the Board passed a resolution that led to the establishment of six regional advisory boards that will be headquartered in New York, Atlanta, Chicago, Dallas, Denver, and Los Angeles. The boundaries of the six regions have been defined according to a number of factors, including the concentration of distressed assets, the coordination of RTC regional headquarters for asset sales, and the similarity of types of problem assets.

Again, the selection process for advisory members is well underway, although no final appointments have yet been made.

II. Oversight and Audits

FIRREA expressly provides that "[t]he Oversight Board shall oversee and be accountable for the Resolution Trust Corporation." This is a responsibility that requires continuing review of RTC actions and the disposition of RTC funds.

We have taken our oversight responsibility seriously from the very first day of operation. A priority has been to establish systems and controls to document the need for funds, to trace their use, and to determine that RTC spending and other activities conform with policies established by the Oversight Board. While the process is an evolving one, the Board is satisfied with the progress made.

Advance Controls: At the Oversight Board's first meeting, we adopted a policy regarding procedures and documentation for approving RTC financing requests that was later supplemented by a policy for the prioritization of funds disbursed by the RTC. These procedures require the RTC, in advance, to support the need for authorization and disbursements of funds by the Oversight Board for case resolutions, high cost funds replacement, liquidity advances, and administrative expenses.

This has evolved into a two-step process. The first step is the RTC's submission to the Board of a general business plan that describes its projected need for funds over succeeding weeks and requests a general authorization to spend the projected amount. After staff review and recommendation, the request is submitted to the Board for a general authorization for the RTC to draw all or part of the requested funds.

The Board's general authorization does not release the funds, however. That comes during the second step of the process, when the RTC submits a written request for funds needed for actual spending consistent with the Oversight Board's general authorization and the RTC's general business plan. These actual spending requests do not involve the Oversight Board in specific case resolutions or spending actions -- that is prohibited by FIRREA. The only time the Board reviews individual instances of amounts spent is during the auditing phase after the transaction is completed.

Each actual spending request is reviewed to determine if it includes all the required information, is signed by a Certifying Officer, and conforms with the uses of funds permitted by FIRREA and Oversight Board policies. If the Oversight Board has authorized sufficient funds to meet the request, a staff memorandum including recommended action is prepared and sent to

the Oversight Board CEO. Only upon his approval are funds actually transferred to the RTC account.

This disbursement process generally takes place quickly and efficiently, while at the same time ensuring that RTC funds are properly accounted for.

Audits: The Oversight Board's audit responsibility extends to the overall performance of the RTC, including its operations, management activities, internal controls, and budget performance. It also requires the RTC to submit the reports or documents necessary for the Board to carry out its oversight responsibilities. For example, the RTC must provide reports to the Board within two days on the status of any funds extended by the RTC for emergency liquidity or to replace high cost liabilities, as described below.

To begin to fulfill the Oversight Board's audit role we have conducted periodic RTC account reconciliations and developed verification and documentation requirements for RTC advances. In addition, we are currently developing more comprehensive audit and review procedures. Finally, we have recently conducted a few random on-site audits at selected thrift institutions to verify that RTC advances were used in accordance with Oversight Board authorizations and policies.

Priorities for Initial Spending: At our August 29 meeting, the Board adopted a policy that listed the priorities that were to guide RTC outlays during the period ending September 30, 1989. We determined that the RTC should expend funds first to resolve institutions under its jurisdiction as quickly and cost effectively as possible.

The second priority was to accommodate the emergency liquidity needs of RTC institutions under RTC's jurisdiction. As part of this process the RTC must require institutions to promptly file a plan describing the funding steps to be taken to replace the emergency liquidity funding.

The final priority was to replace high cost liabilities of RTC thrifts, such as brokered deposits, with lower cost loans from the RTC. This immediate reduction in interest costs reduces thrift operating losses until the institutions are resolved. So long as funds are available that cannot be used immediately for case resolutions (because the numerous thrifts that are currently insolvent cannot be resolved simultaneously), every dollar that is spent to reduce high cost liabilities creates direct savings for the RTC. The relatively simple transactions involved make it possible for the RTC to spend large sums of money quickly, responsibly, and for the direct benefit of the taxpayer.

The Board also established that the first high cost funds to be replaced should be liabilities that mature at institutions that are expected to be resolved in the near term (i.e., by the end of 1989) -- this makes the funds replacement a kind of "down payment" for imminent case resolutions. Preference was also to be given to institutions that ceased new lending and investments so that their lowered cost of funds would not be used to compete unfairly with healthy institutions.

Finally, in providing emergency liquidity and replacing high cost funds, the Board required RTC to take back notes that: (1) established an interest rate sufficient to cover both the government's borrowing costs and any RTC administrative costs; (2) had a maturity of no more than one day to ensure RTC liquidity; and (3) did not diminish the RTC's creditor position. The RTC was also required to establish controls so that insolvent thrifts would only use the funds for the intended purposes and in a prudent and safe and sound manner.

Amounts Authorized and Disbursed to RTC: With these procedures and policies in place, and based on its review of RTC business plans, the Oversight Board in six separate actions generally authorized a cumulative total of $20 billion to be disbursed to the RTC. All of this $20 billion has subsequently been disbursed to the RTC based on specific funding requests that were consistent with the general authorizations. We understand

that the RTC will provide in its testimony the details about amounts actually spent, including a description of the institutions that received the funds and for what purposes, so we will not repeat these details here.

Results of Audits: Over the last several weeks, the Oversight Board has begun to send staff of the Audit and Review Division to selected RTC institutions that: (1) have been resolved; (2) have received funds for emergency liquidity; and (3) have received funds to replace high cost liabilities. The purpose of the audits is to verify that appropriate RTC financial controls are in place and that the Oversight Board's policies and procedures are being followed.

These random audits provided the basis for discussions with the RTC on how to maintain and improve its funds disbursement and documentation procedures. The Oversight Board has been satisfied with these discussions.

As Chairman Seidman said recently, the RTC will probably be the most audited agency in United States history. That appears to be exactly what Congress intended, and the Oversight Board intends to carry out its auditing and oversight duties under both the letter and the spirit of FIRREA.

III. Policy Development

The Oversight Board has established a two-track system to develop policies for the RTC. The first track is to develop individual policies on an ongoing basis to address various issues that require decision in order for RTC to carry forward its work. The second is to develop an overall strategic plan, as required by FIRREA, for conducting the RTC's functions and activities. This will incorporate individual policies already adopted and at the same time address a broader range of issues confronting the RTC. The strategic plan will be submitted to Congress by the end of this year.

FIRREA requires the Oversight Board to consult with the RTC in establishing overall strategies, policies and goals. As a result, one of the Board's first actions was to establish a joint policy development task force consisting of personnel from both the Oversight Board and the RTC. This group has met regularly over these past weeks and has worked well together in developing the initial Oversight Board policies and the foundation for the strategic plan. We believe that continued cooperation and consultation are critical to the successful completion of the RTC's mission.

A. Strategic Plan

Before discussing the individual policies, let me say a brief word about the strategic plan. As you know, the plan must be filed with Congress by December 31, 1989, and both the Oversight Board and the RTC must testify on its contents by January 31, 1990.

In the plan we will undertake to address all of the major issues confronting the RTC (the minimum contents required for the strategic plan by FIRREA are attached -- see Attachment 1). The joint policy development task force has already begun the intensive preliminary work necessary to prepare a draft plan.

FIRREA does not require the Board to publish the strategic plan in the Federal Register for public comment. Nevertheless, the Board believes that it is important to receive public comment on the plan before it is submitted to the Congress. At our open Board meeting two weeks ago we voted unanimously to do exactly that, and we intend the draft to be published in the Federal Register by late October.

Throughout the development of the plan, our staff will continue to meet informally with interested groups to ensure that their views are taken into account in adopting the final version.

B. Individual Policies Adopted

Thus far the Oversight Board has adopted 12 individual policies, all of which are attached to this testimony. (See Attachment 2) These are only a beginning, but they do address five categories of pressing issues confronting the RTC: ethics and conflicts of interest concerns; start-up issues; case resolution methods; initial asset disposition policies; and the review of the 1988 FSLIC transactions. Policies for other major issues -- such as overall asset management and disposition, especially with respect to low income housing -- will be doveloped as the case resolution process progresses and substantial amounts of assets come under RTC control.

1. Ethics and Conflicts of Interest

Because of the importance of ethics and conflicts of interest issues, and because the Committee's letter of invitation specifically asked us to focus on it, we will address this issue first. Let us assure you that the Oversight Board is as anxious as this Committee to protect against conflicts of interest, political favoritism, and other improper actions by employees, agents, independent contractors, and all others who perform services for both the Oversight Board and the RTC.

FIRREA expressly requires the Board and the RTC to promulgate regulations within 180 days of enactment governing conflicts of interest, ethical responsibilities, and post-employment restrictions for their officials and employees that will be no less stringent than analogous FDIC standards. The Act also requires the issuance of regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of the Federal conflict and procurement statutes. Finally, the Act requires the Board to establish procedures to ensure that all contractors and others who perform services for the RTC meet minimum standards of competence, experience, fitness and integrity.

To assure adherence to these standards until regulations can be promulgated, the Board established interim ethics and conflicts of interest policies for itself and the RTC at its first meeting on August 9. For Oversight Board members and those employees who are detailed to the Board from other Federal agencies, the Board adopted the applicable agency's standards of conduct regulations until the Board's own regulations are issued. For those employees who are not covered by Federal standards, and for employees performing services for the RTC, the Board adopted the FDIC's standards of conduct regulations as the interim code of conduct. In addition, the Board directed the RTC to take immediate steps to assure that all its contractual and

other actions are consistent with applicable provisions of FIRREA.

An ethics task force was also established consisting of senior ethics officials of the Treasury Department, the Board of Governors of the Federal Reserve, the Department of Housing and Urban Development, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation, who also represent the RTC. This group is charged with developing employee standards of conduct regulations for approval by the Oversight Board and the RTC. These regulations will also set standards for such special government employees as the members of the national and regional advisory boards and individuals working under contractual arrangements under the direct supervision of RTC employees. Simultaneously, the task force is developing regulations governing the conduct of independent contractors consistent with FIRREA.

In addition to its own work and meetings, the task force has alerted senior officials of the Office of Government Ethics of the project. The target date for issuing proposed regulations for public comment is mid-November.

In the meantime, however, working with the task force, the RTC developed an interim statement establishing principles of ethical conduct for independent contractors. This interim

statement, which was submitted to the Oversight Board in advance, was adopted by the RTC Board at its meeting on September 26. The statement outlines the general ethical principles to which all contractors will be required to adhere. It also places them on notice that any of their actions that result or may create the appearance of a conflict of interest or political favoritism could lead to termination of their contracts. Furthermore, where any such action indicates a possible violation of Federal conflict or other criminal statutes, the matter will be referred to the Justice Department for investigation and prosecution.

2. Start-Up Policies

The second group of policies adopted by the Oversight Board addressed start-up issues that immediately confronted both the Board and the RTC. These include three policies that have already been described: procedures to document funding requests; priorities for initial RTC spending; and the establishment of the joint policy development task force. A fourth policy that has been adopted confirms, as provided by FIRREA, that in any area where the Oversight Board has not adopted specific policies, the RTC is to be governed by the existing policies of the FDIC.

The adoption of these policies has enabled the RTC to move forward quickly without needing guidance from the Board for every issue it confronts. For example, in the area of asset

disposition where the Oversight Board has not yet issued a comprehensive policy, the RTC may proceed under the existing asset disposition policies of the FDIC.

At its first Board meeting the RTC adopted a group of specific FDIC policies.

3. Case Resolution Policies

The Board has adopted three case resolution policies. The first was an interim policy adopted at the first Board meeting concerning complex and controversial financing techniques that had been used by either FSLIC or the FDIC in recent years. These included long-term asset guarantees; yield maintenance agreements; and substantial equity interests taken by the government.

The interim policy directed the RTC to avoid these techniques in its initial case resolutions so that the Oversight Board could fully consider the complex issues involved and adopt specific policies addressing them. This policy did not prevent the RTC from moving forward with any transaction, large or small, that did not involve these controversial financing techniques.

With this interim policy in place, the joint policy development task force examined the issues involved in complex

long-term financing and recommended that the Board adopt two policies addressing both RTC guarantees and RTC equity stakes in resolved institutions. These were adopted by the Board at its September 21 public meeting and essentially supersede the interim policy adopted earlier.

Limitation on Guarantees: Because of its shortage of cash, FSLIC resolved cases in 1988 through long-term assistance agreements, such as yield maintenance and asset guarantees, that exposed the government to ongoing risk of loss and established complex incentive arrangements that may be difficult to supervise over time. The Oversight Board's policy will essentially stop this practice.

The guarantee policy curtails the use of financial guarantees and open-ended assistance agreements in connection with individual case resolutions. Instead, resolution agreements are to be structured to place responsibility for the future financial success of the acquired institution on the acquirer. Such an approach reduces the complexity of the resolution transaction and avoids the need to structure comprehensive incentive agreements to protect the ongoing financial interest of the RTC.

The Board recognizes, however, that to expedite the resolution process, the RTC may find it appropriate to enter

into agreements in which the acquirer initially accepts assets of unknown quality but reserves the right to return such assets to the RTC once the acquirer has had the opportunity to fully analyze the assets. In general, however, any such asset guarantees, capital loss coverage, or asset puts are to have a short-term maturity (i.e., no longer than six months) and should cover only the period required by the acquirer to complete its due diligence.

Equity Positions: In seeking to resolve institutions in an expeditious manner, the RTC may encounter situations where at the time of resolution there remains uncertainty over the value of the institution being resolved and, therefore, the appropriate amount of assistance required. This uncertainty creates the potential for extraordinary profits accruing to an acquirer.

Because of this potential for substantial or extraordinary profits, FIRREA gives the RTC the authority to "take warrants, voting and nonvoting equity, or other participation interests in institutions, assets or properties of institutions" under RTC jurisdiction. Such an ownership interest would allow the RTC -- and, therefore, the taxpayer -- to share in any extraordinary profits.

Equity ownership in a private company by a government agency, however, raises potential conflicts regarding the fair

and equitable treatment of competing companies that must also deal with the government agency. This is especially true where the government has a substantial interest or actively participates in the management of the company.

True equity ownership can also expose the RTC to risk of loss over time as well as substantial gain. Such ongoing risk of loss is essentially identical to the ongoing risk attached to long-term asset guarantees or asset puts. Therefore, the Oversight Board adopted a policy giving the RTC guidance on ownership interests.

This policy directs the RTC to generally avoid taking equity positions that subject the RTC to ongoing risk of loss. It also directs the RTC to avoid taking active equity positions in institutions that it resolves. Recognizing the potential for extraordinary profits, however, the policy directs the RTC to consider passive equity positions through the use of warrants or other devices that permit the taxpayer to share in upside gains (as in the Chrysler bailout) without being exposed to downside losses.

4. Initial Asset Disposition Policies

The development of comprehensive asset disposition policies is one of the most challenging policy tasks facing the Oversight

Board. As mentioned above, we have tended to focus initially on the more immediate issues of start-up questions and case resolution issues.

Nevertheless, the Oversight Board has adopted three initial policies that directly or indirectly concern asset disposition. The first is a policy directing the RTC to establish a working group with other federal agencies involved in asset sales. It is obviously important to have consultation where different government agencies dispose of assets in the same distressed real estate markets.

Consultation among these agencies should assist the RTC in maximizing the net present value of real estate sold while minimizing the adverse effect of its transactions in distressed areas. It will also help the RTC achieve its statutory goal of making affordable housing available to low-income and moderate-income individuals.

The Board's second asset disposition policy involves the statutory requirement for the RTC to utilize the services of the private sector, particularly for asset management and disposition, if it determines that it is practicable and efficient to do so. (As a practical matter we believe the RTC will have no choice but to use the private sector extensively because of the sheer magnitude of assets involved.) The policy

adopted at the first Board meeting directed the joint policy development task force to develop explicit standards for determining the availability, efficiency, and practicability of using the private sector and standards for choosing among competing private sector firms. This process is underway and the Board expects to consider staff proposals in the near future.

Finally, the Board adopted a policy requiring the RTC to provide a proposal to the Oversight Board for the appropriate disposition of the Federal Asset Disposition Association within 180 days after enactment. Once this proposal is received we fully expect to take Board action in time to satisfy FIRREA's liquidation deadline of 180 days from the date of enactment.

Again, these policies are only the beginning of a comprehensive plan to establish guidelines for the management and disposition of assets. The joint policy development task force is already hard at work on these issues, and we expect such issues to be a key element of the strategic plan submitted to Congress.

The Board is also keenly aware of the low and moderate income housing issues that are involved in asset disposition and some of the tensions raised between maximizing returns to the RTC and achieving housing objectives. We are fortunate to have the Secretary of HUD and his staff to provide us assistance in this

area. Our staff has also begun informal meetings with groups representing low-income housing interests (as we have with other groups affected by the legislation) and we expect that consultation process to continue.

5. Review of FSLIC Deals

The Board recognizes the substantial interest that Congress has in reviewing the FSLIC transactions to achieve cost savings. As you know, the RTC must file a report with the Board and with Congress concerning its comprehensive review of the FSLIC transactions that occurred between January 1, 1988 and August 9, 1989, and steps that can be taken to achieve taxpayer savings. The Oversight Board's role is to develop and establish overall strategies policies and goals in connection with any restructuring of 1988 transactions.

The Board at its first meeting requested the RTC to furnish by September 30 an initial draft of the methodology it intends to use to conduct its review of the 1988 transactions. We expect to receive this draft soon.

C. Working Capital Policies

In addition to asset disposition, a number of important issues will need to be addressed in the coming months either

individually or as part of the strategic plan. These include asset management issues; the fairness and openness of bidding procedures for RTC thrifts and RTC assets; and issues concerning the types of institutions that can acquire thrift institutions.

One issue that will need resolution quickly relates to working capital and the use of RTC notes and guarantees. The RTC currently spends funds for two purposes: (1) to fill in the negative net worth "hole" of an insolvent thrift so that its assets cover its liabilities; and (2) to acquire certain assets (that are typically non-performing) resulting from either a liquidation or a so-called "clean bank" transaction (where bad assets are stripped out of a failed thrift before it is sold).

Funds spent for the first purpose, to fill the negative net worth "hole," are gone and will not be returned to the government; the amount spent is the true cost of resolving an institution.

Funds spent to acquire assets are not gone, however; they are simply replaced by illiquid assets. Theoretically, until the assets are sold the RTC cannot use these resources to resolve other institutions. This would put tremendous pressure on the RTC to sell assets in order to unlock the cash or working capital necessary to resolve more cases.

Acknowledging this potential problem, FIRREA specifically authorizes the RTC to borrow funds against the assets acquired, subject to a borrowing cap based on the fair market value of the assets and other restraints. The Board and the RTC are currently examining a range of options for the best means of unlocking this working capital through different financing techniques.

A related issue that has recently been raised concerns FIRREA's borrowing cap. Suggestions have been made that the literal language of the statute permits the RTC to spend more than $50 billion to resolve cases, as opposed to borrowing funds for working capital purposes.

We disagree. The statute provides $50 billion to fill the negative net worth hole of currently insolvent thrifts and thrifts that fail over the next three years. RTC will not use RTC borrowings to increase that ultimate amount above $50 billion.

IV. REFCORP

During the first two months, the Oversight Board has also carried out its responsibilities in connection with the Resolution Funding Corporation (REFCORP), which is charged with raising $30 billion for thrift resolutions.

First, as required by FIRREA, the Oversight Board has selected two presidents of the Federal Home Loan Banks to serve as members of the REFCORP directorate along with the director of the Office of Finance of the Federal Home Loan Banks.

Second, as anticipated by FIRREA, the Oversight Board has requested and received a ruling from the Securities and Exchange Commission (SEC) that REFCORP bonds are exempt from registration under the Securities Act of 1933 and from regulation of trading under the Securities Exchange Act of 1934. The SEC found that the exemptions were consistent with the public interest and the protection of investors. These exemptions will reduce the cost of financing thrift resolutions by narrowing the spread between Treasury securities and REFCORP bonds.

Finally, in consultation with REFCORP staff, the Oversight Board drafted regulations for assessing the Federal Home Loan Banks as provided for by FIRREA. These regulations will be published shortly in the Federal Register. In addition, the Oversight Board asked the REFCORP directorate to assess the $1.2 billion that FIRREA directed the FHL Banks to pay to REFCORP in fiscal year 1989. The $1.2 billion was received by REFCORP on September 22, 1989, and has been disbursed to the RTC.

VI. Conclusion

Thank you again for giving us the opportunity to review the Oversight Board's activities since the passage of FIRREA. Chairman Greenspan, Secretary Kemp, and I would be glad to answer any questions you may have.

Attachment 1

FIRREA-MANDATED CONTENTS OF THE STRATEGIC PLAN

Title V, Section (a)(14)(B), of FIRREA requires the strategic plan to contain, at a minimum, the following:

1. Factors for determining order of resolutions.
2. Standards to select type of resolution.
3. Factors to consider in deciding treatment of nonperforming assets in assisted acquisitions.
4. Plan for disposition of assets.
5. Management objectives for measuring progress.
6. Plan for organizational structure, staffing, and use of third-party contracts.
7. Incentives to promote efficient asset management.
8. Standards for competition among and fair treatment of offerors.
9. Standards to prohibit discrimination in solicitation and consideration of offers.
10. Procedures for active solicitation of offers from minorities and women.
11. Procedures for notification of rejected offers.
12. Procedures for establishing market value of assets.
13. Procedures requiring timely evaluation of purchase offers.
14. Procedures for bulk sales and auction marketing of assets.
15. Guidelines for determining which assets have no reasonable recovery value.
16. Guidelines for conveyance of assets to state and local government agencies for use in HUD urban homesteading programs.
17. Policies and procedures for avoiding political favoritism and undue influence in contracts and decisions made by the Oversight Board and RTC.

Attachment 2

POLICIES FOR RTC ESTABLISHED AT OVERSIGHT BOARD MEETINGS

1. Establishment of joint Oversight Board-RTC policy development task force.

2. Procedures and documentation for approving RTC funding requests and the use of notes and guarantees.

3. Priorities for initial case resolutions (revised).

4. Interim ethics and conflict of interest standards.

5. Utilization of private sector.

6. Restructuring 1988 FSLIC deals to save taxpayer costs.

7. Disposition of Federal Asset Disposition Association (FADA).

8. Adoption of existing FDIC policies for RTC in other areas until the Oversight Board establishes appropriate general policies.

9. Priorities for RTC expenditures through September 30, 1989.

10. Guidance on Ownership Interests.

11. Interagency Consultation on Asset Sales.

12. Limitations on Guarantees.

POLICY 1

ESTABLISHMENT OF JOINT POLICY DEVELOPMENT TASK FORCE

To augment the policies adopted at this Oversight Board meeting, a joint policy development task force will be established immediately with personnel from both the Oversight Board and the RTC. This task force will make specific recommendations to the Oversight Board concerning overall strategies, policies and goals for the RTC and concerning the strategic plan that the Oversight Board must develop and submit to Congress by December 31, 1989. The policy areas to be addressed will include: (1) least cost case resolution methods; (2) asset disposition, including procedures concerning the right of first refusal granted to certain qualified buyers; (3) sources and uses of funds for RTC activities; (4) Oversight Board audit, review, and monitoring of RTC activities; (5) other policy areas specifically mentioned in the statute concerning the strategic plan; and (6) such other areas as deemed appropriate. The task force will provide an initial draft of recommended policies in each of these areas to the Oversight Board by September 15, 1989.

The Oversight Board staff will review these recommended policies and consult further with the RTC, if necessary, before the Oversight Board establishes additional policies.

POLICY 2

PROCEDURES AND DOCUMENTATION FOR APPROVING RTC FINANCING REQUESTS

A. RTC Case Resolutions (includes Asset Liquidations)

The following documentation from RTC will be required, in advance, to support the authorization of disbursements of funds by the Oversight Board for case resolutions:

a) projected dates of the transactions (initiation and completion)

b) face amount and estimated fair market value of assets and liabilities (including contingent liabilities) at latest available valuation date, for each institution

c) projected cost of case resolutions

d) method of resolution chosen (such as liquidation, "clean bank" or "whole bank")

e) estimated amount and nature of assets and liabilities expected to be retained

f) amount of funding requested to cover expected cost (and explanation of any overage funds sought beyond expected cost)

B. RTC Working Capital (notes, guarantees, and other obligations)

The following documentation from RTC will be required, in advance, to support working capital requests:

a) projected dates of the transactions

b) face amount and estimated fair market value of assets and liabilities (including contingent liabilities) at latest available valuation dates

c) projected net amount of working capital required

d) amount of funding or guarantee to cover expected working capital needs (and explanation of any overage funds or guarantee sought beyond expected amount)

e) nature and source of working capital (such as notes, guarantees or other obligations). If guarantee is sought, nature of entity whose financial obligations are guaranteed and its intended source of funds, if any.

f) collateral behind financing, if any.

C. RTC Operation Costs and Disbursements

The following documentation from RTC will be required to support projected operating expenditures and internal disbursements for which Oversight Board funding approval is requested:

-- personnel salaries and benefits

-- cost of outside contractors (asset management, asset disposition, etc.)

-- office overhead

-- other

In all cases, documentation shall be submitted with appropriate detail and categorization, as determined by the Oversight Board. In addition, documentation shall be submitted within an appropriate timeframe as determined by the Oversight Board.

POLICY 3

PRIORITIES FOR INITIAL CASE RESOLUTIONS

In order to provide an opportunity to address important policy issues that may have long-term implications, the Resolution Trust Corporation (RTC) should initially concentrate on case resolutions that do not involve complex asset disposition and financing techniques such as long-term asset guarantees, yield maintenance agreements, or substantial RTC equity interests.

This policy is not intended to preclude the RTC from implementing resolutions of institutions of any size or from initiating efforts to resolve institutions that might require complex asset disposition and financing techniques. If significant issues do arise during the resolution process that are not addressed by current Oversight Board or FDIC policies, these issues should be referred to the Oversight Board for immediate attention.

Revised August 29, 1989

POLICY 4

INTERIM ETHICS AND CONFLICTS OF INTERESTS STANDARDS

The Oversight Board and RTC are required to promulgate, within 180 days, regulations governing conflicts of interests, ethical responsibilities, and post-employment restrictions applicable to their members, officers, and employees, that are no less stringent than those applicable to the FDIC. The Oversight Board must also promulgate, together with RTC, regulations applicable to independent contractors governing conflicts of interests, ethical responsibilities, and the use of confidential information consistent with the goals of titles 18 and 41 of the U.S. Code. Finally, regulations must be promulgated by the Oversight Board that establish procedures for ensuring that any individual who is performing any function or service on behalf of RTC meets minimum standards of competence, experience, integrity and fitness.

Since the Oversight Board and the RTC must begin their operations immediately, it is necessary to establish interim policies and standards for ethics and conflicts of interests pending the promulgation of the necessary regulations.

Accordingly, pending the promulgation of these regulations, the members, officers, and employees of the Oversight Board who are subject to the standards of conduct regulations of another Federal agency shall be subject to the regulations of their respective agencies with regard to Oversight Board activities. In addition, during this interim period the regulations governing the responsibilities of the FDIC shall apply to those members, officers, and employees of the Board who are not subject to the standards of conduct regulations of any other Federal agency. Finally, the Oversight Board staff shall analyze the respective agency regulations applying to its members, officers, and employees in relation to the FDIC's regulations and submit to the Board proposed regulations that meet the relevant provisions of the FIRRE Act.

With respect to the RTC, pending the promulgation of regulations pursuant to the FIRRE Act, members, officers and employees shall be subject to existing regulations governing the responsibilities and conduct of the FDIC's members, officers and employees.

In addition, the RTC shall take immediate steps to ensure that all actions taken, and contractual or other arrangements entered into to carry out the purposes of section 21A of the Federal Home Loan Bank Act (which establishes the RTC and the Oversight Board), are generally consistent with the conflicts of interests and ethics provisions of that section. The RTC shall

advise the Oversight Board in 10 days, or sooner if practicable, of the steps it intends to take or the procedures it has adopted. Finally, pending the promulgation of regulations, any individual performing a function or service for RTC must abide by the specifications set forth in section 21A to meet minimum standards of competence, experience, integrity, and fitness.

POLICY 5

UTILIZATION OF PRIVATE SECTOR

The statute requires the RTC to utilize the services of the private sector if the services are available and if the RTC determines that it would be practicable and efficient to use them. The specific services mentioned are real estate and loan portfolio asset management, property management, auction marketing, and brokerage services.

This policy applies to the RTC immediately. Even during the initial period of action pursuant to an interim operating plan, the RTC must seek to use private sector services pursuant to the statutory standard. At the same time, the Oversight Board should develop more explicit standards for using private sector services, including:

-- A standard for determining the availability of such services;

-- A standard for determining whether the use of available services would be practicable and efficient; and

-- A standard for choosing among competing private sector firms.

An initial draft of these suggested standards shall be provided by the joint policy task force to the Oversight Board no later than September 30, 1989.

POLICY 6

RESTRUCTURING 1988 FSLIC DEALS TO SAVE TAXPAYER COSTS

The Oversight Board has the duty and authority to develop and establish overall strategies, policies, and goals for the RTC, in consultation with the RTC, for restructuring the insolvent institution cases resolved through agreements by FSLIC between January 1, 1988, and the date of enactment of the FIRRE Act. The goal of any restructuring is to achieve cost savings that will in turn reduce taxpayer costs.

Accordingly, the RTC should provide to the Oversight Board, by September 30, 1989, an initial draft of the general methodology to be used by the RTC in reviewing and analyzing such cases in order to determine whether restructuring would achieve savings. This methodology shall include an evaluation and review of costs under the FSLIC agreements with respect to capital loss coverage, yield maintenance guarantees, forbearance, tax consequences, and any other relevant and ascertainable cost considerations (including reasonable provision for contingencies), and shall further include a review of the bidding procedures used in resolving such cases in order to determine whether the bidding and negotiating processes were sufficiently competitive.

The Oversight Board will thereafter review the analytical methodology in consultation with the RTC and will develop and establish such strategies, policies, and goals as are necessary to achieve savings by RTC under such agreements.

POLICY 7

DISPOSITION OF FADA

The statute requires the RTC to liquidate the Federal Asset Disposition Association (FADA) within 180 days after enactment. Accordingly, the RTC shall provide a proposal to the Oversight Board by September 30 for the appropriate disposition of FADA and the handling of FADA's personnel.

POLICY 8

EXISTING FDIC POLICIES TO BE USED BY RTC DURING TRANSITION

It is the intention of the Oversight Board that the RTC will carry out its responsibilities under basic strategies, policies, and goals adopted by the Oversight Board. However, during the initial transition period, as the Oversight Board develops and establishes strategies, policies, and goals for the RTC, the RTC may carry out its responsibilities in accordance with the strategies, policies, goals, regulations, rules, operating principles, procedures, and guidelines of the FDIC existing at this time. As soon as practicable, but no later than August 15, 1989, the RTC shall provide the Oversight Board for its review, such FDIC strategies, policies, goals, regulations, rules, operating principles, procedures, and guidelines under which it is operating, and the Oversight Board will take such actions to develop, establish or modify such items as authorized and appropriate.

POLICY 9

PRIORITIES FOR RESOLUTION TRUST CORPORATION EXPENDITURES THROUGH SEPTEMBER 30, 1989

The following priorities should guide outlays by the Resolution Trust Corporation (RTC) during the period ending September 30, 1989:

I. Resolutions

The RTC shall, as first priority, resolve (purchase and assumption, transfer deposits, and/or liquidate) institutions under its jurisdiction as quickly and cost effectively as possible.

II. Deployment of Other Available Funds

To the extent funds available to RTC are not employed for first priority cases, RTC shall deploy such excess funds (A) to accommodate the emergency liquidity needs of institutions under its jurisdiction and (B) to replace high cost deposits and borrowings as they mature at institutions under its jurisdiction.

A. Emergency Liquidity

1. For institutions under RTC jurisdiction, the RTC should serve as "lender of last resort", that is RTC should provide funds to institutions experiencing liquidity difficulties when it determines that such institutions can neither liquidate assets nor raise funds from any other sources at reasonable rates to meet immediate liquidity needs.

2. The RTC should require institutions receiving emergency liquidity funds to promptly file with the RTC a plan describing the funding steps to be taken by the institution to replace the emergency liquidity funding.

B. Replacement of High Cost Liabilities

1. The RTC should use its best efforts to first replace high cost liabilities as they mature at institutions under its jurisdiction that are expected to be resolved by the end of 1989;

2. The RTC should then replace high cost liabilities as they mature at other institutions under RTC jurisdiction. Preference should be given to institutions that have ceased new lending and investments.

C. Terms of Funding Provided by the RTC

Funding for emergency liquidity or to replace high cost liabilities by the RTC to institutions under its jurisdiction should:

1. Be at an interest rate sufficient to cover the government's cost of borrowing such funds, plus an amount required to cover any related administrative costs of the RTC;

2. Have a maturity of one (1) day or on demand;

3. Be structured so that the RTC is a secured creditor or has a priority in liquidation equal to that of an insured depositor; and

4. Require assurances and appropriate internal controls so that funds provided will be used only for the intended purposes and in a prudent and safe and sound manner.

To allow proper monitoring and for cash management purposes, the RTC should, as soon as practicable, provide weekly reports to the Oversight Board on the status of any funds extended by RTC for emergency liquidity or to replace high cost liabilities.

POLICY 10

GUIDANCE ON OWNERSHIP INTERESTS

The Resolution Trust Corporation (RTC) should generally avoid taking equity interests in resolved institutions that expose the RTC to risk of loss over time. Such ongoing risk of loss is essentially identical to the ongoing risk attached to long-term asset guarantees or asset puts.

The RTC should also avoid taking equity interests that permit the RTC to exercise control or actively participate in the management of resolved institutions. This type of government participation invariably involves potential conflicts of interest and interference with the private sector that are undesirable.

The foregoing would not preclude the RTC from taking passive equity positions, through the use of warrants or other devices, so as to permit the RTC to share in any substantial gains by a resolved institution without subjecting itself to the ongoing risk of loss.

POLICY 11

INTERAGENCY CONSULTATION ON ASSET SALES

The RTC may be disposing of real estate assets in the same geographical markets as other federal agencies. In some cases, the real estate markets in these areas are currently distressed. As the RTC formulates its asset disposition strategies in these areas, it would be beneficial for the RTC to establish an informal working group to consult with other agencies that are selling assets in these same markets.

Such consultation would assist the RTC in maximizing the net present value of real estate sold while minimizing the adverse effect of its transactions in distressed areas. Such consultation might also assist the RTC in the preservation of the availability and affordability of housing for low-income and moderate-income individuals.

POLICY 12

LIMITATIONS ON GUARANTEES

In order to minimize the ongoing risk to the RTC arising out of resolved institutions, the RTC should minimize its use of any forms of financial guarantees and open-ended assistance agreements in connection with individual case resolutions. Notwithstanding the foregoing, indemnity agreements that serve to insulate or otherwise protect acquirers from the acts or omissions of the failing institutions may be utilized to facilitate resolution transactions. Resolution agreements should be structured so as to place full responsibility for the future financial success of the acquired institution on the acquirer. Such an approach reduces the complexity of the resolution transaction and avoids the need to structure comprehensive incentive agreements to protect the ongoing financial interests of the RTC.

The Board recognizes, however, that to expedite the resolution process, the RTC may find it appropriate to enter into agreements in which the acquirer initially accepts assets of unknown quality but reserves the right to return such assets to the RTC once the acquirer has had the opportunity to fully analyze the assets. In general, however, any such asset guarantees, capital loss coverage, or asset puts should be short-term (i.e, no longer than 6 months) and should cover only the period required by the acquirer to complete its due diligence.

The CHAIRMAN. Let me, first of all, acknowledge the presence of Mr. Robson, who you have referenced, and let me ask Secretary Kemp—did you have a set of comments you wanted to make, Secretary Kemp?

STATEMENT OF JACK KEMP, MEMBER, OVERSIGHT BOARD OF THE RESOLUTION TRUST CORPORATION, WASHINGTON, DC

Mr. KEMP. Mr. Chairman, I would like to make a brief comment about the role that HUD is expecting to play by virtue of the responsibilities that Congress has placed upon the Oversight Board of RTC, and I want to express my agreement with Secretary Brady that the Oversight Board has indeed hit the ground running and is, I believe, running in the right direction.

In putting HUD on the Oversight Board—and I will make this brief, Mr. Chairman, but I think it is important, not only to you but to the other distinguished members of this committee who are concerned about the issue of housing and low and moderate income housing as well as affordable housing—that in putting HUD on the Oversight Board of RTC Congress recognized that we at HUD have not only a unique perspective on the disposition of assets, but a vital role to play in property disposition, which can be potentially a very important tool for a social as well as an economic goal of providing affordable housing.

Congress I believe had the foresight to include HUD, which will enable me on the Oversight Board to become involved in this process.

A lot of people would argue that HUD has made a lot of mistakes—and they are right—in the past in the property disposition business. I think we have learned from the mistakes of the past. We think that we are putting them behind me. I have Al Dellabovi, the Undersecretary of HUD, Austin Fitts, FHA Commissioner, and Steve Britt, Deputy General Counsel at HUD, and together we believe that we can not only learn from those past mistakes but make a valuable contribution to the role of the Oversight Board of the RTC.

We believe that there are benefits, Mr. Chairman, in putting properties into the hands of low income, moderate income people through State and local housing agencies and nonprofits throughout this country. We think that is, as I said, not only good social policy but can be good business as well.

HUD is clearly the Federal Government's largest owner of residential property, but we are not the only one. Fannie Mae, Freddie Mac, Farmers Home, VA, and now the RTC all hold sizeable inventories of property. We intend to enhance the consultation in property disposition activities of the Federal Government as well as the federally chartered agencies, Mr. Chairman. We are working closely at HUD with the RTC on the creation of a task force that would involve all of the agencies I just mentioned in this very important issue. We consider it essential that we create an orderly market in distressed areas of the country for both the sale to individuals as well as to low income housing interests. I know Senator Wirth and others would be keenly interested in the fact that we are not interested in any free-fall in housing assets or property of those who are

in markets which are quite different, different in the various regions of the country.

I am a strong believer, as I know you are, Mr. Chairman, in creating partnerships with State and local agencies and nonprofits and other housing providers, and there can be, I believe, a coordinated national policy for meeting low and moderate income housing requirements under the charter given to us by Congress under FIRREA.

I consider it highly interesting, the idea of a coalition of agencies and nonprofits that could be put together to provide a nonprofit holding company to buy low and moderate income housing in bulk. I have asked my HUD staff to work with the RTC to explore this positive idea to see if it has even greater potential.

We want to find ways to provide FHA insurance to these and to other groups like State and large local housing finance agencies that can participate in the process of providing affordable housing.

So the role, Mr. Chairman and Senator Garn and others who have played an important part in this overall strategy in giving the Secretary of HUD a way and a vehicle for helping to restructure our nation's financial system, I think it shows a strong, healthy commitment by Congress and this Administration to housing. We have established a Regulatory Review Board within our department to monitor and coordinate our involvement with the RTC and the Federal Housing Finance Board, Freddie Mac, and Fannie Mae.

Let me just briefly say, in conclusion, I am going to play a very active role in all of the Board meetings and have up until this point. As I said, we have established an internal housing working group under the leadership of both Mr. Dellabovi and FHA Commissioner Fitts.

I have been meeting personally with all of the various housing constituent groups that Congress I am sure has met with over the years and that I have an obligation under Congress' charter. I have met with the Association of Community Organizations for Reform Now, called ACORN. I have met with the Consumer Federation of America. We have met with the Consumer Union, Enterprise Foundation, the National Low Income Housing Coalition. I am meeting Friday with the Housing Now Coalition, the National Neighborhood Coalition, Center for Community Change, the National Puerto Rican Coalition, the National Housing Partnership, National League of Cities, Mayors, Governors to make sure, Mr. Chairman, that HUD in its role on the Oversight Board of RTC does what Congress chartered it to do; that is, take an active role and be a catalyst. To make sure that there is a profound concern for the role that housing plays is good policy both socially and economically for our nation.

I also want to say, Mr. Chairman, that I have appointed Mary Bush, former Vice President for International Affairs at Fannie Mae, as the President of the Federal Housing Finance Board. She was previously at Treasury. She has been at the IMF, the World Bank, and I think is going to make an outstanding contribution.

We met recently with the 12 Federal Home Loan Bank Board Presidents. I have asked them to come up with an affordable housing and community investment working group, Mr. Chairman. They are going to report to me, and I will be reporting as a coordi-

nator with the RTC Oversight Board in that very important role. Congress' very strong responsibility that they have given to us to keep our eye on this issue of affordable housing is one that I take very seriously, and I look forward to not only working with Chairman Greenspan and Secretary Brady, but making sure that we totally coordinate with the very important role that this committee plays.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Thank you, Secretary Kemp.

Chairman Greenspan, you, not being a member of the Cabinet, are really sort of a more independent, arm's-length party that serves here. I would be very interested in any comments you would make at this point.

Mr. GREENSPAN. Well, thank you, Mr. Chairman. I have no formal statement to make, but I am prepared to answer whatever questions you would like to put to me.

The CHAIRMAN. Very good.

Before beginning the questions, we have had a number of colleagues come in. We have tried to compress opening statements this morning, and we have done a pretty good job of it in terms of the Senators involved, but I do want to acknowledge those that have come, and let me start with Senator Garn.

Senator Garn, did you have a comment to make?

Senator GARN. Thank you, Mr. Chairman. I apologize to the witnesses for not being here. My schedule still shows that this hearing started at 10:15. There is always the 5 percent that doesn't get the word, and the Ranking Minority Member was the one that didn't get the word this morning. [Laughter.]

So I won't take any more time. I would simply ask that my statement be placed in the record.

STATEMENT OF SENATOR JAKE GARN

Senator GARN. Today the Banking Committee will hold the first of its oversight hearings on the resolution of the savings and loan crisis. When the conference committee concluded, for the last time, its work on the text of the legislation, and that bill was passed by the Congress and signed into law by the President, we only completed the first phase of our involvement in the resolution of this immense problem.

We are still early in the start-up phase, fiscal year 1989 has just passed and with it the responsibility for applying $20 billion in Treasury funds directly toward the clean up of the thrift mess. As several warned during conference, $20 billion has apparently been too ambitious a target to aim for in the few weeks that remained of the fiscal year.

I am pleased, however, that no mad effort was indulged in to spend the funds unwisely merely to reach an arbitrary $20 billion figure. I understand that these funds will still be available. And while it is important that the clean up proceed rapidly, it is also important that the limited taxpayer resources not be wasted or used where they will not do the most good.

I am concerned over the debate that seems to have developed over capital standards. That debate seems to have spilled over into

the RTC and had a role in delaying the resolution of several savings and loan cases. I hope that this matter can be resolved quickly. Certainly capital standards for assisted savings and loans should be consistent with the standards for existing, non-troubled thrifts. And these standards, as required now by law, should be consistent with bank capital standards. All of these need to be consistent with reason and the safety and soundness of our Nation's financial institutions.

I would hope that the RTC will not try to carry the whole load by itself. Resolution of the failed thrifts and disposition of the assets is too big of a job for any Government agency. The Pentagon wouldn't be big enough to deal with it. That is why the legislation directed the RTC to make maximum use of the private sector. I realize that we are still early in the start-up process, but so far it is difficult to see to what extent the RTC plans to make use of the private sector and comply with this clear mandate in the legislation.

Overall, I am pleased with the caliber of people who are in charge of this process. We certainly could not ask for a more capable and distinguished group than those who are testifying before this committee today. We should all take some reassurance from the fact that we have these outstanding individuals in charge as we begin to restore health to the savings and loan system.

As a final note I want to say a word about asset distribution by the RTC. This will truly be an art, not a science. The easiest thing in the world would be to secondguess the difficult judgment that the RTC will have to make regarding the timing and prices associated with asset disposition. I hope Members of Congress, in particular, will be able to resist the temptation to take cheap political shots at the RTC and its Oversight Board as they proceed with this difficult task of asset disposition.

The CHAIRMAN. Very good.

Senator Sanford.

Senator SANFORD. No. You have compressed me adequately. [Laughter.]

[The complete prepared statement of Senator Sanford follows:]

OPENING STATEMENT OF SENATOR TERRY SANFORD

Senator SANFORD. Thank you, Mr. Chairman. I would also like to thank our distinguished panel of witnesses for appearing before us today to review the activities to date of the Resolution Trust Corporation (RTC). I would also like to commend your efforts to date in getting the RTC up and running in such a short amount of time and to thank you for the thorough reports you have presented to us this morning.

Certainly before the ink was dry on the legislation creating the RTC, stories appeared in the press regarding the impossible task facing the RTC. An editorial in the Wall Street Journal depicted it as follows:

> When the RTC reaches full manhood, it will be a wonder to behold. Assigned to take over and dispose of assets of seized S&L's, it will become the world's largest "bank," very loosely defined. Assets could reach a nominal value of $300 billion to $400 billion. It will employ some 4,000 people, most of whom will manage contracts

with private specialists in asset management and disposal. Lawyers and accountants will love it.

The article goes on to describe the conflicting duties of the RTC and to conclude that taxpayers can look for more and more waste of their money. Now I would certainly hope that the conclusion and even some of the predictions the Wall Street Journal makes will not come true, but those type of statements underscore the tremendous task you gentlemen face in setting up and managing the RTC.

It is clear that your main mission is to sell dead or dying thrifts and to find buyers for assets of bankrupt institutions. I don't think any of us underestimate the difficulty of that task. However, I think we also share the concerns expressed during consideration of this legislation and underscored in numerous articles about the RTC—we must not let this become another bureaucracy run amok, rife with scandal or charges of favoritism.

I am afraid that the potential for abuse is as immense as the task you face. I think we all have learned some very painful lessons from the FSLIC's problems and the scandals at HUD. One of those lessons is that we cannot confuse deregulation with desupervision and the other is that constant oversight and proper audits are imperative to ensuring that taxpayer funds are well spent. I know you share our concerns regarding the potential problems and we appreciate your efforts to take on this immense task in a professional and efficient manner.

I know we all look forward to your report on your efforts to date and to working with you time and time again in the future to ensure that abuses do not occur.

Thank you.

The CHAIRMAN. Senator Bond.

Senator BOND. Mr. Chairman, we have before us a very distinguished and very busy panel, and each of them has other responsibilities. I am glad you have brought them here so we can talk with them about this very important subject.

I think oversight is extremely important, and I trust that our oversight will be constructive rather than destructive.

And I thank you very much for giving us this opportunity.

The CHAIRMAN. Very good.

Senator Pressler.

Senator PRESSLER. Mr. Chairman, I have two other committees meeting. So I am going to be in and out. I hope to get back to ask my questions. If I do not, I will submit them for the record.

The CHAIRMAN. Very good. I have statements from Senators Dixon, Sasser, Graham, and Kerrey to be inserted in the record.

STATEMENT OF SENATOR ALAN DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here this morning as the Senate Banking Committee conducts its first oversight hearing of the Resolution Trust Corporation. I thank our witnesses for appearing today. Secretaries Brady and Kemp and Chairmen Greenspan and Seidman, we do not often see you together. The task of the RTC is so enormous and so important that your joint presence is warranted.

Given this occasion, I trust that our Congressional oversight of the RTC Oversight Board won't allow any oversights of important issues.

We have quite a number of issues to go over, but I will set my sights first on the ethical standards adopted by the RTC.

The standards adopted are a strongly worded set of minimum guidelines. They are important to have on paper. Yet, we all know it is not enough to have proper standards on paper. Every employee of the RTC must not just read these rules, they must live them. Every RTC senior and mid-level official must continuously emphasize their importance.

The RTC has a truly enormous task to do. Criticism of whether properties are being held too long or sold off too quickly are to be expected. Although I do not expect the RTC to change human nature while it resolves the thrift industry, I do expect everyone at RTC to do everything possible to prevent self-dealing, favoritism, and other forms of corruption.

I look forward to our witnesses' testimony on my concern about ethical standards and on RTC's strategic plan, the bidding and resolution processes for failed thrifts, and a number of other equally significant matters.

STATEMENT OF SENATOR JIM SASSER

Senator SASSER. I want to compliment you on your great wisdom, foresight and leadership in calling these oversight hearings on the savings and loan bailout.

If there's one thing that we should have learned from the savings and loan debacle, it's the importance of appropriate and thorough oversight. This problem is so big, so serious and so costly, that I don't think we could begin our oversight too early.

Indeed, I'm concerned, at least I'm extremely curious, about the $7.9 billion that the RTC neglected to spend last Friday. We were told that the whole $20 billion that the recently enacted legislation made available for fiscal year 1989, could be spent on legitimate transactions in fiscal year 1989. But now we find out it wasn't.

And Mr. Chairman, yesterday's Wall Street Journal reported that the bond market was skittish because the RTC intends to issue some $100 billion in debt in the next few years. Not only do I have a budget concern with that, but I know of no authority in the thrift legislation that would permit such an issuance.

And last, as always, it appears that the funding provided for in the bailout bill will be inadequate to deal with the problem. We know from past experience that delay, and inadequate resources, only increases the eventual cost. I'm concerned that these continually overly optimistic administration projections will only mean that the taxpayers will pay much more in the long run.

Mr. Chairman, thank you again for calling this hearing and assembling this most distinguished panel.

STATEMENT OF SENATOR BOB GRAHAM

Senator GRAHAM. Mr. Chairman, let me compliment you on holding this very important hearing on the Resolution Trust Corpora-

tion [RTC] and the Oversight Board. I hope this is the first in a continuing series of oversight hearings on the RTC.

I would also like to compliment Secretaries Brady and Kemp, Chairman Greenspan, Chairman Seidman and their staffs for quick start-up action on the savings and loan problem. Your timeliness will help keep the cost to the American taxpayer and the healthy part of the financial industry a little lower.

The word for the day is OVERSIGHT. This hearing provides our Committee an opportunity to find out how the Regulatory agencies are carrying out the Financial Institutions Reform, Recovery and Enforcement Act of 1989 [FIRREA]. Our Government has just passed the start of the new fiscal year and the legislation has been enacted only a few short weeks. It is time to check in with our patient and see how it is doing.

There are many questions which need a response from our witnesses and I will be looking forward to their answers. My questions will be focused in the following areas:

How well are the regulators carrying out the language and the spirit of the law.

How and where have the $20 billion that Congress has appropriated on-budget been spent.

Do the regulators believe they have enough money to handle the case resolutions.

What kinds of problems have they already encountered in resolving these cases.

What kind of interaction has taken place between the financial community and the new agency in explaining its functions and goals.

What kind of coordination is occurring between the various agencies and their respective staffs in Washington as well as with the regional offices.

I look forward to our witnesses testimony.

STATEMENT OF SENATOR J. ROBERT KERREY

Senator KERREY. Mr. Chairman and members of the committee, I appreciate having the opportunity to address you on the Resolution Trust Corporation. I would like to reiterate my concerns about the role of the Resolution Trust Corporation in overseeing the dismantling of our bankrupt savings and loans. These concerns are, I believe, being borne out as the RTC takes its very first steps in fulfilling the responsibilities assigned to it by Congress and the administration. These actions involved the accounting practices used by RTC officials to satisfy the requirement—included at the insistence of the Bush administration—that $20 billion be spent by the end of fiscal year 1989.

Earlier this year during consideration of the S&L bailout measure I unsuccessfully proposed an amendment to structure the RTC Oversight Board in such a way as to increase accountability and ensure good management. While my amendment may not have been the perfect solution, events of the past week indicate that concerns about the RTC's structure are clearly justified.

Today's Washington Post reports that the RTC failed to meet the requirement that it spend $20 billion by the end of fiscal year 1989.

That failure was not from a complete lack of effort on the part of the RTC. In fact, in rushing to meet the deadline, the RTC carried out a paper transaction on Friday, September 29, that Department of Treasury lawyers declared illegal on Monday, October 2.

While I am concerned that the RTC has not met the deadlines required by law, I am far more concerned about the judgment exercised by RTC officials and the implications this holds for future transactions.

The most troubling event here is the admission by the RTC Oversight Board that they had nothing to do with this paper transaction. In fact, an unnamed spokesman for the RTC conceded that the Oversight Board didn't even know about it. Frankly, this type of hands off management has me very worried. If the Oversight Board is not even aware that the RTC is frantically trying to spend $8 billion in a way that the Treasury—after the transaction is actually carried out—finds illegal, then I think we have serious problems.

My concern was, and remains, among other things that the RTC Oversight Board is too far removed from what is going on. It is not surprising that the Oversight Board is not directly involved in these deals. After all the Board includes three of the busiest people in Government. Basically, the day-to-day management of billions of dollars has been turned over to lower officials in the RTC who have done little thus far to inspire confidence in their ability to carry out the responsibilities they have been assigned.

In this case, the RTC's hasty dealmaking came to a screening halt after Treasury Department lawyers pointed out that the transaction was illegal because the Treasury would actually be borrowing money that already belonged to the Government. Hasty judgments do not make good public policy. These events should ring familiar to similar experiences with Government asset management and disposition in the past.

We are standing on the edge of another example of Government mismanagement. The difference here is the scope of the assets: The RTC as an institution is being asked to keep track of hundreds of billions of dollars.

The taxpayers have made a tremendous contribution to dispose of the failed S&Ls' assets and deserve accountability. I urge the Congress to exercise a great deal of oversight as the RTC moves forward. In particular, it is critical that we move quickly to make adjustments in the law if events indicate that they are necessary.

The CHAIRMAN. Let me then go to the questions, and let me ask you, Secretary Brady, where do we stand with respect to finding and nominating the two individuals who will fill the other two seats on the Oversight Board?

Mr. BRADY. Mr. Chairman, we have—as you know, FIRREA prescribes two independent nominees, one shall be Republican, the other Democrat, and we have narrowed the choices down to two individuals, one from each party. They are going through the process of clearance which, as you know, is extensive, and as soon as we can get them further through the process than they are at this moment we will make the names known.

The CHAIRMAN. So the prospective nominees have been identified and in a sense selected subject to going through the clearance process?

Mr. BRADY. That is correct, sir, but I would just emphasize that the clearance process is about identical to what a Cabinet officer has to go through, and so it is tough going for some of these fellows as they learn exactly what they have to do, they, you know, may have reasons why they don't want to do it. So I would prefer, if you would, just to keep their names quiet at this time.

The CHAIRMAN. Now, you made a comment in passing that there are healthy frictions that exist here as they do in any complicated endeavor where you have got working groups that have somewhat different functions. I appreciate all the positive steps that you have outlined that have been taken and are underway.

What problems have we run into? Where are there sticking points that we need to know and think more about?

Mr. BRADY. I wouldn't say—and I would ask John Robson, who has been the person who has really been in charge of this operation from the Treasury, to comment if he would afterwards—I wouldn't say there really were any that required the attention of this committee.

But I would just point out that we are engaged in establishing an enterprise which is of some $50 billion in size, and we are talking about new procedures and we are talking about different responsibilities between the FDIC and the RTC and the Oversight Board. So it is just, I would say, in the nature of shakedown activities.

But, John, if you would——

The CHAIRMAN. Well, if I can, let me come back to Mr. Robson because you will be able to remain, and I would like to stay with the two Cabinet officers who are going to have to leave at a set point.

With respect to the bidding process, what do we tell somebody out in the country who is interested in these properties and would like to figure out how they can identify themselves and get into the bidding and not get shouldered out by somebody else who is stronger or knows the government process better? What can we say to people who want to get in and take a look and get into a competitive bidding process on these properties? What do they do and how are we going to accommodate that kind of broad interest so the neck of this bottle doesn't narrow down to a favored few?

Mr. BRADY. Well, I think, Mr. Chairman, that we have learned a lot in the last several years about how we keep these processes open, and I want to assure you that they will be completely open as far as the oversight function of the RTC is concerned.

From our own point of view, we want "come one, come all". The more people we get involved in this process, the better job we are going to be able to do for the public, and the questions you have raised are exactly those that we want to address.

The CHAIRMAN. So in other words, the policy directive that you have established and have communicated is to the effect that you want a procedure put in place where all comers are invited and in effect treated equally, is that correct?

Mr. BRADY. That is correct.

The CHAIRMAN. Now with respect to the amount of money we are going to need here, quite apart from this set of questions about this $8 billion transaction within the last several days, is it your best professional judgment that $50 billion is still sufficient to do this job, based on what you have learned since we passed the law?

Mr. BRADY. I know of nothing that has occurred since the time the law was passed that would change my view. I think that to be deadly precise about whether $50 billion is exactly the right figure, from our viewpoint, isn't the point. Maybe we need $52 billion, maybe we only need $48 billion. But the point that I think is important is we have taken a problem together jointly, which was a bonfire, and stamped it down to where we are looking at the embers. Now, our job is to make sure that the embers stay embers and they don't get ignited again, and from what I know now, Mr. Chairman, that is exactly the situation.

The CHAIRMAN. Chairman Greenspan, let me ask you, also, for your best professional judgment. You have looked at this and as you settle into this new additional responsibility, are you satisfied that the 50 billion is sufficient?

Mr. GREENSPAN. Mr. Chairman, let me just repeat what I said earlier on that question to this committee. We won't know exactly whether the 50 billion is or is not adequate, and I am not sure that we need to know. In fact, if we knew exactly at this particular point, I am not sure what we would do about it, what we would do with the information.

What we do know is that the Federal Government is obligated to clean up this mess. There is no qualification with respect to that, and we will do what has to be done in order to essentially meet the liability which we have essentially taken on.

What that liability is will be determined only at the end, and I am not certain what particular actions we need to take at this stage or what we would take even if we knew what that number was.

What I do think is terribly important is that the Congress pass the legislation, get the RTC in organization, get the process going and stanching the deterioration in the system. I think it is now up to us to clean this problem up, to meet it, and as we get into more detail we will learn how much this will ultimately cost.

I do think, in any event, this whole issue will have to be revisited as we get a much tighter knowledge of what the facts are, but we won't know that for a while and there will be judgments that will be coming out inevitably in the next months, which are largely guesses on numbers we do not yet know.

I think what is important is the process, and if I thought that knowing what a specific—if I thought that if we were able to make an estimate and it would make a difference in how we acted, then I think we would need the estimate. But I can't conceive within any range where our actions would change, and since I cannot conceive of anything we would do if we knew the number, I don't feel an overwhelming necessity to make a sharp calculation at this point.

The CHAIRMAN. Well, let me just make one comment, and that is that if any of you reach a point, in a few months, where you think that you know enough to conclude that the number is going to come in higher than that, please communicate that to this commit-

tee. I mean, we are interested in the view of all of the members of the Oversight Board, and so I want to make sure that if and when we reach that point—let's hope we don't—we would like to hear it directly and from each of you independently if one or another of you has that view.

Secretary Brady, you wanted to add something?

Mr. BRADY. Mr. Chairman, I would just like to make one obvious point. We will certainly try to do what you have just suggested, but the size of the problem varies based on a number of different elements—real estate values and interest rates—and real estate values and interest rates go up and they go down. So everybody understands that what might be true in one month may not be true a month later.

So we make sure we take a snapshot. We understand it could be a little different very shortly.

Senator D'AMATO.

OPENING COMMENTS OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I don't have a statement as such, but I am going to take some heart and comfort in what Mr. Greenspan, our distinguished Chairman of the Board, has indicated because I have to be quite candid with you, when I hear the statements when I am coming in today on the radio that Bill Seidman is saying doom and gloom and what a huge hole this is and it is going to be $50 billion, more than $50 billion, we don't know how much—now, I know it is not fair to say that. He will be up here. He will get a chance to respond to that—I almost think that borders on irresponsibility. You got a job to do. Now, maybe he hasn't said that, but that is certainly how the media characterizes this.

Now, we know we have got a big problem, and how anybody can determine what the value of the assets you have—and I guess that is number one, and I don't know how long that is going to take for you to figure out—and those values are changing as market conditions change. As situations improve, the value of the assets may increase. As situations—as more property comes on the market, it may decrease. You have regional considerations. New England now they tell me has got some problems developing, et cetera.

But I think Chairman Greenspan's remark that it is the manner and method by which we attempt to do the best to preserve those assets, to turn them into whatever liquidity so that the Trust then can do its job, that is the key; and that is what I am certain that everybody here is working toward.

So for us to say how much is the value and how long will it take you, how could you answer it? Can any one delegate tell us here at the table how much the value of those assets or the properties are and how long it is going to take to find the value? We would like to do it as quickly as possible, but. . . .

Mr. BRADY. Well, I think you have answered the question, Senator D'Amato. As we get into the process, I am sure Chairman Seidman's estimate of the problem will become more factual because he will have more factual situations to look at. I think really anything we say today is premature.

Senator D'AMATO. Well, I will end at that point. I will say that it is not going to take a great prognosticator to say that we have got some problems developing in other areas. New England, they tell me some of the market has gone soft on the condos. You have got devaluation in certain areas, certain kinds of construction, of about 25 percent. That is going to lead to some problems. It doesn't take a great genius to say that.

I am just going to say that if you want to just be in there in doom and gloom, the idea is to do what we have to do to minimize those losses and to bring in the kinds of revenues which are going to do the best job for the people, to minimize the impact of these losses.

So I have great faith in the gentlemen and the procedure that is set up and the job that they are going to do in the overview, and I thank the Chairman.

The CHAIRMAN. Thank you very much, Senator D'Amato.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Gentlemen, I don't suppose any of us know what the total value of the assets. There is figures out there that it is $400 billion, and I don't know how you determine that today or tomorrow, how you get into it. I guess the value is determined on what it will bring in the market whenever it is put up.

But a couple of years ago, right before this same committee, the figures were $5 billion was going to bail this savings and loan industry out. We know that is not true, and we know that you don't know if $50 billion or $48 billion, as Secretary Brady said, or $52 billion will be the figure, but I think it is very important that we know, that we are not surprised, as the Chairman says, if there is any inkling that it is going to take a lot more money, that we know early because restoration of confidence in the American people—a lot of them haven't really gotten down to the hit that this is going to take over many years, but it is going to, and we can't afford—as everybody here knows and you three plus Mr. Seidman, four, know well, we can't afford hindsight.

So that is why you are starting out, and I commend you from the beginning on oversight and auditing and selection of the kinds of people you have got to have.

Jack Kemp knows what he inherited over at HUD. He knows that hindsight is too late. Oversight from the beginning with a outfit that is 2 months old now, I commend you. We want to work with you, but don't surprise us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Shelby.

Senator Gramm.

OPENING STATEMENT OF SENATOR GRAMM

Senator GRAMM. Thank you, Mr. Chairman.

Well, Mr. Chairman, let me begin by picking up where Senator D'Amato left off. I am more concerned about acting now to minimize the cost in the future than I am about trying to see a new headline about how much the cost is going to be. I think, in fact, because Congress did finally act, because we have provided re-

sources, because we are putting together a mechanism to deal with it, we have an opportunity to act in such a way as to minimize the cost. For my own part, that is where I want our energies to go.

Let me also say, since my part of the country is going to be greatly impacted by this, and since I view it as the most important part of the country in terms of the future——

[Laughter]

The CHAIRMAN. Wait a minute, now——

Senator GRAMM. I am sort of like the fellow who has got to go to the dentist: I know it is going to hurt, I hate going, but I am eager to get there and get it over with.

The one thing I want to urge you to do is to act quickly and act boldly. I can remember when I was in graduate school reading Walter Badgett about central banking. He said, "In a crisis, lend boldly at a high rate of interest." [Laughter]

I do not know about the high rate of interest, but I want to urge you to act boldly.

In my part of the country, the presence of all these assets that are going to be managed by people that are not operating under the profit motive, and therefore are not driven by the invisible hand to promote the public interest, is a frightening prospect. The possibility that the assets will be held and under-utilized is one that imperils our economic growth. The possibility that the assets are going to be dumped and depress values threatens the liquidity and solvency of every financial institution in my state.

So the prescription we are trying to put out, and that we wrote over and over and over and over into the bill is that we want every asset for sale every day, but not at any price. But no matter how we have written it into the bill, no matter how we have tried to involve the private sector, you still get back to how it is administered.

I guess the first question I would like to ask is, I wanted these advisory committees, so that at least local people that had ideas, that saw what was happening, that could see it in terms of their own bottom line, would have an opportunity to give you their insight.

Where are we on naming these advisory committees?

Mr. BRADY. Senator Gramm, we have a file that is about this big of names of possible members of those advisory committees. We are in the process of doing what we did with the two oversight board members who will join us, we hope shortly. We are working on it hard.

Not everybody who is totally qualified for these jobs wants to take them on. I think you will be very pleased—I know you will be very pleased with Dan Kearney, the new president of the RTC Oversight Board. I think you will be equally pleased with the two people we have selected for the other oversight spots on this board. One of them we hope will be approved has regional experience in the areas most concerned with the problem. The other person has enormous experience in the real estate business. So if we can get by the clearance process, I think you will find that those two nominees will give you some insight as to what the advisory boards around the country will look like.

I think we have six advisory boards, with five members each. So we have got 30 people to go through. But we are at it, and we have got a file that you cannot fit in a shoe box that we are working on.

Senator GRAMM. Well, Mr. Secretary, if there is any way we can try to expedite that—because I can assure you that there are lots of projects in my state that are on hold, waiting to see what is going to happen when this asset disposition occurs. There is nothing that wilts entrepreneurship and the incentive to invest more than uncertainty.

So the sooner we can act, I think the better off we will be. The sooner we can act, the lower the ultimate cost of the program will be, and I think the better we will do in terms of trying to recoup the value of these assets.

So I do not have a lot of questions. I just wanted to urge you to move forward as quickly as you can, to be bold. While generally it is a political prescription, "Do something, even if it is wrong" is generally a prescription to assure that it will be wrong. In this case, I want to urge you to act as quickly as possible, because the economic cost of the uncertainty of what we are going to do is very, very high.

The CHAIRMAN. Thank you, Senator Gramm.

I am going to just assign the time that is left before the Cabinet Secretaries have to leave—Mr. Greenspan of course will be remaining. I am going to divide it up, so that all the members here will have a chance to ask a question, to about four minutes apiece.

Let me start with Senator Wirth.

Senator WIRTH. Thank you, Mr. Chairman.

I just want to add my comments to Senator Gramm's question about the advisory boards and the urgency of setting up the boards. There is a tremendous amount of nervousness in my area of the country about the RTC and how it is operating, and how it is going to relate to the local economy. So I hope you can move out rapidly on that front.

Two brief questions: One about the capital requirements for newly formed state chartered banks and thrifts. It is my understanding that the FDIC has suggested a 4½ percent tangible capital to assets ratio. The Comptroller of the Currency had suggested 3 percent. Is that information accurate? If there is a conflict between the two, I would trust that you are moving to reconcile the conflict.

Do you know, Secretary Brady?

Mr. BRADY. There is a difference of opinion. What we are trying to do is to get the opinion of all the regulating agencies and come up with a conclusion. At this point, we have not been able to do that, because the opinions have just come forward recently. But we will, as you say, have that resolved in the not too distant future.

Senator WIRTH. The second question that I have relates to the strategic plan. In the strategic plan, you are to do a property inventory. I assume that work has begun. Is that correct? Mr. Robson, maybe you are the person to ask about that.

Mr. ROBSON. The RTC, Senator Wirth, would give you better data on that. My understanding is that they have started to move forward with the inventory.

Senator WIRTH. You have the responsibility for developing that overall strategic plan. Isn't that right?

Mr. ROBSON. That is correct.

Senator WIRTH. I would assume that there should be an approach outlined in the strategic plan concerning the inventory. The reason I am asking that is, there is a great deal of interest again in my area of the country in potentially valuable environmental and recreation lands. I know that you probably do not have, nor is there any reason you would have, the staff, the expertise, to conduct that kind of an inventory.

I wanted to point out that in the past the Fish and Wildlife Service had worked very closely with the Farmers Home Administration, in helping the agency do the inventory of their properties. They have been doing that since 1987. We have heard from both the Park Service and from the Fish and Wildlife Service that they would like to work with the board in your strategic plan and Mr. Seidman with the RTC itself, in developing the inventory.

I would like to request that you meet with both the Park Service and the Fish and Wildlife Service. They have a lot of expertise to offer in this area, and also potentially a great interest in the properties. As you know, there is a lot of money that gets spent out of the land and water conservation fund, I think about $200 million a year. The states of Florida and California and Texas and other states are also spending a great deal of money on the acquisition of properties.

If it is possible to conduct this survey of properties rapidly, we might end up saving time and the taxpayers money. Maybe you could—I know you are about to leave Mr. Robson, and Mr. Kearney is coming in, but you might pass that on to him and also to the RTC itself.

Mr. ROBSON. We will.

Senator WIRTH. All right. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wirth.

Senator Pressler.

Senator PRESSLER. Thank you very much, Mr. Chairman.

For purposes of brevity, I shall ask two questions and ask the panel to respond. I know that they have a limited amount of time, and I have just 4 minutes.

I first would like to address a question to Secretary Kemp, I see in his opening statement reference to some of the steps HUD is taking, at his direction, to implement the new responsibilities which the new law imposes on the Secretary of HUD, the regulation of Freddie Mac, the membership on the board of RTC, the Federal Housing Finance Board. Will you please elaborate a bit more on the steps being taken?

My second question is addressed to all members of the panel. That is, on page 17 and 18 of Secretary Brady's testimony this morning, he talked of the ethical reforms. I am all for reforms and for rules and regulations, but I wonder, on page 18 it states, "It also places them on notice—" that is, the contractors—"that any of their actions that result or may create the appearance of a conflict of interest or political favoritism could lead to termination of their contracts. Furthermore, where any such action indicates a possible

violation of federal conflict or other criminal statutes, the matter will be referred to the Justice Department," and so forth.

Would "political favoritism" involve a record of having contributed to candidates or political parties? What is the meaning of that to you?

So I have asked two questions.

Mr. KEMP. The first question was addressed to me, Senator Pressler, so I will respond by saying that first of all we at HUD have been very active in implementing our responsibilities under FIRREA. We are mindful of both the challenge and problems, as well as the opportunity that is presented to us. That is creating opportunities for safe, decent, and affordable housing.

I have been very active for HUD in the board meetings and the consultations that have involved matters of starting up and policy. I mentioned earlier that we have established an internal housing working group under my FHA Commissioner, Austin Fitts, and Undersecretary Al DelliBovi. We also serve on RTC's Interagency Task Force, which includes Fannie Mae and Freddie Mac, VA, Farmers Home Administration, to address the various asset disposition issues.

That brings us to the key question, which is going to take the wisdom of Solomon: How do you dispose of properties and minimize the adverse impact on local markets? We are responsible for making sure that we are sensitive to market conditions in areas like Senator Wirth alluded to in Colorado, as well as Senator Gramm in Texas; while we want to maximize the return to the Government and to the taxpayer on asset sales. Of course, I have a particular obligation to keep my eye on the availability of low and moderate cost housing.

Let me just briefly say that RTC cannot sell real estate in any distressed area at less than 95 percent of the market value. In the low and moderate housing programs, all eligible properties—i.e., $67,000 for a single family, and $28,000 to $50,000 for multifamily units—must be disposed of in the following special procedures: One, the right of first refusal. Low and moderate income persons or public agencies and non-profits will get 90 days to purchase eligible properties before they can be offered to others.

There is a clearinghouse that has been alluded to earlier by Secretary Brady, as well as myself. It will involve the state housing finance agencies, non-profits, that will take into consideration location, the condition of the market. I think it also responds to some of the things that Senator Riegle asked about.

The law will contain limits on multifamily rents; i.e., 30 percent of income. The RTC may provide purchase money financing at market or below market rates. Of course, HUD has a program of assisting people by allowing us to use Section 8 certificates and Section 202 housing finance and other subsidies that may be related to RTC properties.

So this is all part of the effort that Chairman Brady and Mr. Greenspan and I and the other members of the Oversight Board want to make in developing a strategy which will be made public, and which will take into consideration, hopefully, all of the factors that are required in this very important decision-making process.

The CHAIRMAN. Secretary Brady, with a time-out, could you give a "yes" or "no" answer to the second question that Senator Pressler put? Does it need more than that?

Mr. BRADY. I can give a two-sentence answer, if that is okay.

The CHAIRMAN. Very good.

Mr. BRADY. Our statement says that we would make sure that we have no appearance of conflict of interest or political favoritism. Some things are illegal, others are unseemly, and we intend to avoid both.

The CHAIRMAN. Is that a satisfactory answer, Senator Pressler?

Senator PRESSLER. If you could elaborate, is this going to restrict so much the people who might be bidding or the private contractors? I mean, would major contributions to a political party be included in this category?

Mr. BRADY. Well, I would say, Senator Pressler, that that is an evolving code that the Government is being asked to react to, to include in its procedures. Obviously, there are a lot of people involved in the political process on both sides of the fence.

I think that what we have to do is avoid the impression that any of our actions—obviously are illegal; we would not do that—but I think further, we have to make sure that they are not unseemly, as well.

The CHAIRMAN. Senator Sanford.

Senator SANFORD. Thank you.

Secretary Brady, I appreciate your being here.

It seems to me that your position puts you in somewhat of a philosophical conflict between the RTC needing to dispose of three or four or five hundred billion dollars in assets more or less as promptly as possible, and at the same time urging us to enact a capital gains tax deliberately designed to cause people to dispose of property immediately in order to pay us taxes so we can meet our Gramm-Rudman targets.

Now, how do we get around that? Is that a sound public policy?

Mr. BRADY. Well, maybe I have not thought it through, Senator, but I do not believe that the RTC is in a position to either get or receive capital gains benefits.

Senator SANFORD. I do not think they are, either, but they are going to be dumping property at the same time all of these investors are dumping property.

Mr. BRADY. Well, you know, maybe there is some part of it that could affect our operations, but most of the real estate that we will be dealing with is in areas where I think there is probably a capital loss, rather than a capital gain.

Senator SANFORD. But what has that got to do with glutting the market? You still will be putting more assets up for sale in glutted markets.

Mr. BRADY. I do not think I said anything about it glutting the market. What I am saying is that I do not believe that it will have a material effect on the real estate market, for a number of reasons, one of which is that a lot of these assets are in areas where there is not going to be capital gains. So it would not enter into anybody's calculations, I do not believe. Maybe I am missing something.

Senator SANFORD. I am afraid you are missing my point.

We are forcing the sale of billions of dollars of distressed property, already putting in jeopardy the stability of real estate markets in all parts of the country. Now, we are proposing a tax policy that is deliberately designed to encourage people to dump more property.

We have both of these forces coming on us at the same time. If we had a problem with distressing the markets by putting too much property up for sale, it looks to me like we are doubling the jeopardy by enacting a short term capital gains tax reduction at the same time.

Mr. BRADY. Well, with all due respect, sir, I do not see it that way.

Senator SANFORD. How do you see it?

Mr. BRADY. Well, just as I have tried to say, I think first of all we are in a market where most of the assets have losses. So I do not quite see in that regard how we will have a capital gains problem. There is no reason why these people should dump assets.

I understand that the Jenkins-Archer proposal, as it came out of the House, has a two-year window, but I think the effort on the Senate side, if there is an effort, to come up with a capital gains provision will make this a more long-standing policy, to try to reward people for holding on for longer periods of time. If that is the case, then I think people will hold on for a longer period of time and not affect our operations.

Senator SANFORD. Thank you. I hope this discussion will help us all think through the effect of these conflicting government policies.

Let me ask Mr. Kemp a question that goes to the same problem. That is, you have got property that you hold in HUD that is repossessed and up for sale, and you named about six other agencies that do so as well. Now, the RTC has additional properties. All of these strike me as being, at least inadvertently, competitive with one another. It is almost as though you have five real estate companies trying to dispose of their properties, competing with one another.

Is there any way that that can be coordinated? Should all of these properties be turned over to the RTC? Is there any way to get around that kind of situation? It strikes me as being competitive, but it also means that each agency will be forcing each other's prices down.

Mr. KEMP. Well, first of all, I do not disagree with the basic predicate of the question, which is that there is need for coordination. I think, in the overall strategy that the Oversight Board is developing at RTC, it is going to take into consideration not only the role that the RTC has to play in maximizing the sale, but also not to cause a dumping problem in certain areas—in all areas, actually.

I think it is one reason why Congress, in its wisdom—from my standpoint anyway—put me on that Oversight Board.

Senator SANFORD. I think so.

Mr. KEMP. And it is going to take the wisdom of Solomon.

Senator SANFORD. I think it was wisdom. Would you give us your opinion, in due time, as to whether or not you need any more statutory authority in order to achieve that goal?

Mr. KEMP. All right. I appreciate the question.

Senator SANFORD. Thank you, Mr. Chairman.

Mr. BRADY. I might just say, Senator Sanford, that we have a policy which was adopted at the last meeting that requires consultation.

Senator SANFORD. Well, I am just wondering if consultation is enough. The real estate board would consult with its members, but then they would be out competing with one another. I think you understand my concern.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you, Mr. Chairman.

This is really not the forum I guess to debate the capital gains proposals. I want to make three quick points.

Number one, as I believe Secretary Brady has pointed out, the situation with the assets which the RTC is going to have to dispose is that they are going to be probably in areas where there are not going to be capital gains; and therefore the real estate being disposed of is not likely to be competing with capital gains gains as opposed to loss sales.

Second, for any of the members of the panel who have not done so, I would urge you to read the very persuasive article by our colleague, Senator Boren, that appeared in today's Washington Post, which I think adequately deals with many of the economic arguments for capital gains.

Finally, speaking of low-income housing, I would share with Secretary Kemp the fact that the person who made the most persuasive argument for lowering capital gains rates was a pushcart operator on the plaza in downtown Kansas City, who had saved up over the years and bought rental properties. Wishing now to retire, he finds that although he nominal value of the properties is two or three times what he paid for them, the actual value that he would get from them is far less than the money he paid out 20 or 25 years ago. He objected, as a very modest-income person, having to pay a 33 percent normal income tax gain on the phantom gains of inflation.

Now, having taken up half my time, I would like the members of the panel to address in the time remaining the question of how you propose to use private sector resources, what plans the RTC has for doing so, and how much of the asset management and disposition you think can be turned over to the private sector. I would invite any of the panelists to comment on that.

Mr. BRADY. Senator Bond, one of the reasons why I am pleased that we have Dan Kearney coming on-board as president of the RTC is that this is the exact business that he has come from. He has been a participant in the real estate business over the years, as well as having served his time in Government.

When we were looking for a candidate to run RTC we were looking for just this kind of a person, who had a proper balance between Government service and private enterprise.

So I think we are going to have to feel our way. It is a simple matter of fact that with up to $400 billion in one estimate of assets inside this organization, we are going to have to use more than Government resources to get the problem done. We want to do it in a way that is effective from the taxpayers' point of view.

Senator BOND. Do any of the other gentlemen wish to comment on that?

Perhaps a comment, Secretary Brady. You indicated there would not be a Gramm-Rudman problem with the $8 billion not spent in fiscal year 1989. There are some who think that if we have to spend that in 1990 that might add $8 to $9 billion more to the deficit. We have got a rather tough stump to jump, to get down to $64 billion in deficit for 1990.

Have you looked at that? Chairman Greenspan perhaps might want to comment on that.

Mr. GREENSPAN. I just want to say, the $64 billion is for 1991.

Senator BOND. Excuse me, for 1991. Right.

Mr. BRADY. Well, to answer your first question, this is an enormously complicated area. But with regard to Gramm-Rudman, whether or not the transaction which was being thought about affected the Gramm-Rudman calculations, it does not, because they are based on a snapshot as of the 15th of August, which is past. So there are no Gramm-Rudman calculations involved.

However, whether that money is spent in fiscal year 1989 or 1990 does affect the deficit in the same way that all of the receipts and disbursements that are coming in between now and the end of the year, and supplemental appropriations from Congress and appropriations bills coming through do. So the final figures would be affected, but it has no Gramm-Rudman affect.

The CHAIRMAN. Thank you, Senator Bond.

Senator Sasser.

Senator SASSER. Let me just follow up on that question, if I may, Mr. Secretary.

As I understand what occurred here, we were advised that the RTC was to spend $20 billion in fiscal year 1989. As we got to the end of fiscal year 1989, they found they were $7.9 billion short of outlaying the full $20 billion. So we went through, apparently, some last-minute machinations, loaning the money to five thrifts, or at least this was considered, loaning the $7.9 billion to five thrifts. They in turn loaned it back to the Government some way. This was the original scheme, which was finally I think rejected by your own lawyers over there at Treasury.

The question comes, why couldn't the full $20 billion be outlaid in 1989 to deal with the thrift problem, as the Congress had been told it would be outlayed.

Mr. BRADY. Senator Sasser, I think that question is going to be more properly answered by Chairman Seidman of the FDIC during his testimony. But I would say, from what we know of it, that they were, the RTC, within a matter of days of finishing these transactions, and because they wanted to make sure they got the highest and best bids on these things, they decided not to do them during this year.

Again, I suggest you ask this of Chairman Seidman, but I understand that when they get into that position during normal FDIC operations, that they generally put funds in reserve for those kinds of transactions. However, I would just point again to the end of your statement, which is that in trying to flesh out whether this transaction could or could not take place, it became clear at a point

in time that it is against the law to invest appropriated funds in interest-bearing transactions. So the whole discussion was moot.

Senator SASSER. Well, perhaps Mr. Seidman can shed some more light on it.

One final question, Mr. Chairman, because I know we are trying to hurry through here. Mr. Secretary, as I understand it, the Oversight Board was set up to set policy for the Resolution Trust Corporation. Now, originally, as it was conceived, the Resolution Trust Corporation was itself supposed to be a small agency that would be very closely aligned with the Federal Deposit Insurance Corporation.

Is this oversight board that is being set up, I assume to oversee the Resolution Trust Corporation, going to have a staff? If so, how many staff people? Where are these people going to come from? What are these people going to do? Are they going to be real estate experts?

Mr. BRADY. If I may, Senator Sasser, I am going to ask John Robson, who has been involved particularly in that process, to answer the question. He would give you a more complete point of view. But I think the number is about 60 that we are aiming at.

Mr. ROBSON. Senator Sasser, we have been operating essentially with detailed people, about 30 or so, since we went live on the 9th of August. The activities are going to be in the policy setting area, in the financial analysis area, in the traditional audit and oversight area. I would expect, as Secretary Brady just said, that the staff will not be large. It will be highly professional. I would expect it to continue to be somewhere in the range of 60 or 80 during its entire existence.

Where the execution of activities occurs down in RTC, they are going to have a lot more people.

Senator SASSER. Thank you.

The CHAIRMAN. Thank you, Senator Sasser.

Senator Garn.

Senator GARN. Thank you, Mr. Chairman.

In the interest of time, I have a number of questions that I would submit for the panel to respond to in writing, but just let me make some observations. It seems to me that this problem is so serious and so large that if there was ever a time when Congress ought to behave non-politically, this would be it, in cooperation with the RTC, the Oversight Board, the Administration, to solve the problem. But I suppose that it is virtually impossible for Congress to do anything non-politically.

I congratulate the Chairman of this committee for handling it that way on this side of the Hill, and for expediting the bill and working cooperatively with me and all members of the committee to get a bill passed as rapidly as possible. I think that is the way a committee ought to behave, the way this one did.

I think you also have to recognize that this is your easy hearing, and that you will be used as a scapegoat. There is no way possible for RTC to do the job properly, because whatever you do there will be some member of Congress, when the TV lights turn on, who will say you either dumped, you flooded the market in his area, or you are not keeping your responsibility to the taxpayers—one or the other way. You wait and see.

Maybe I have been here too long, 15 years. Maybe I am getting too cynical. But recognize that that will take place; that somebody will jump up and say you have done it wrong, no matter how conscientiously, no matter how hard you try to do it right. That will be a given.

Second, in all of this debate, I have been amazed for a number of years now at the preoccupation with the size of the problem. We continue to talk about the size of the problem. I look back to 1986, when the estimates were $25 billion or $30 billion, and I succeeded in passing $15 billion of FSLIC recap, which certainly would not have solved the problem, but I do not think we would be here today with this kind of a bill, or an RTC, or an Oversight Board, or anything else, if that $15 billion had been made available 3 years ago. But the House chose not to pass that.

The next year, they said by law it was a $5 billion problem. The Senate said it was a $7½ billion problem. Now, those who by law just 2 years ago said it was a $5 billion or a $7½ billion problem want to pin everybody down as to how it is a bigger problem.

I think that there are some who, from a political standpoint, just hope like hell that it is. Just think of the headlines they can get when they come back and say, "I told you so."

I remember, Mr. Chairman, you testified several times, when asked the size of the problem, when we were debating that—rather than trying to deal with solutions 2 years ago, it was much more fun to hold hearings over and over and over again about what the size of the problem was—that unless somebody could tell you what the prime rate was going to be for the next 30 years, that you could not do that.

I suggest that that is still the case; that unless somebody can tell us what the prime rate will be month-in and month-out for the next 25 or 30 years, we cannot accurately pin that down.

Second, I am not able to predict what the real estate market is going to be in Texas, or California, or other places. So there are a lot of variables. With all due respect, I would suggest that the problem will be bigger than a $50 billion problem. I do not know how it can be otherwise.

In my 15 years here, I have never seen anybody in Government make an estimate that was low. Not once, on any problem, on any situation. So I would expect that it would be higher. But so what? I do not mean to be cavalier about it. The point of it is, a couple of years ago, I said, "We ought to get the tourniquet on, we ought to stop the hemorrhaging, and if we put it on too tight, we loosen it, and if we did not put it on tight enough, we tighten it some more."

I think the point that Senator Gramm of Texas made is important: Let's get on with it, and try and minimize it, and not continue to be preoccupied with the size of the problem. Because the harder we work and the faster we work and the bolder we are, the less the size of the problem will be. I hope it is $48 billion.

Whatever it is, debating the size of the problem, when we cannot tell—there is no human being that can tell exactly what the size of the problem is. You do not have a doctor in an emergency room sitting there with a patient dying on the table trying to decide how serious it is at the moment and a bunch of people debating what kind of treatment; they are going to put the tourniquet on, they

are going to try and stop the hemorrhaging and try and stop the bleeding, and if they have to take other actions they will do so.

So it is important that we work cooperatively; not in an adversarial relationship. If it turns out to be a $70 billion problem, we have to make some adjustments. If it is less, we will all be grateful. But somehow, once—once on a problem, I would like to see Congress say, "Let's eliminate not only partisan politics, let's eliminate individual politics. We have got a hell of a problem imposed on the American people and the taxpayers through no problem of their own." Can't we just forget the TV cameras for once, and work together, collectively, to solve the problem?

As far as arbitrary deadlines—just one more comment, Mr. Chairman—any time we set arbitrary deadlines, I think that is foolish. To debate whether the $20 billion was spent by September the 30th, what is magic about September the 30th? Should we have rushed to obligate all of the $20 billion, regardless of whether it was a good deal or not? I do not think the taxpayers want that.

We will get it done in 10 or 15 days. So what? After all these years of procrastination by Congress, to worry about an arbitrary deadline—again, I have only been here 15 years. Only once in 15 years has the Congress of the United States passed the appropriations bills by the end of the fiscal year. So who is talking about deadlines?

I mean, I would be embarrassed, as a member of Congress, to talk about deadlines by other organizations, when we cannot do the one job that we are supposed to do year after year, and that is finish the appropriations process by September the 30th. We used to have to do it by June the 30th, but we could not do it, so we extended the fiscal year. I suppose the next step should be, why don't we make the fiscal year December 31st? Make it a calendar year again, give us another three months not to do our work around here.

So my message is: Let's get the job done as rapidly as possible, and see if, in the way the Chairman has handled it so far, his example could be used by the Congress to get the job done.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Garn.

Senator Kassebaum.

Senator KASSEBAUM. Thank you, Mr. Chairman.

Just briefly, I agree with Senator Garn about deadlines and amounts, but I do think we have a very important oversight responsibility here, and I just hope that we can ask the right questions because I think that is terribly important.

I apologize for missing important testimony, but we were voting in another committee. I do not think that this has been addressed, but I have a couple of questions to ask regarding policy.

Has there been a policy established regarding a successful bidder having to assume as well as the deposits the assets? Are you doing this on a case-by-case basis?

Mr. BRADY. We have not got a policy on that yet, Mrs. Kassebaum.

Senator KASSEBAUM. I am thinking of instances where of course there are very good deposits but there may be some real dogs that

are assets. If you allow just the deposits to go, you are left with some shells there that would be, I think, a burden.

Do you see this as important as an overall policy?

Mr. BRADY. Well, I do think it is something that we ought to come forward with a policy statement on. We have come forward with policy statements on various other aspects of related problems, such as asset guarantees, interest maintenance agreements, and the possibility of taking common stock interest and warrants. We certainly should add this to this list.

Senator KASSEBAUM. Before any sales are completed.

Mr. BRADY. Sorry?

Senator KASSEBAUM. Before any sales are completed?

Mr. BRADY. I do not know as we will be able to do that.

John, do you have a comment?

Mr. ROBSON. Well, Senator Kassebaum, at the moment, as the RTC under Mr. Seidman's direction goes forward, they are doing some resolutions, some of which involve the transfer of deposits to another institution and the retention of assets by the RTC.

Mr. Seidman can give you greater detail on that. I would simply add the thought that I am not sure that you want to have a policy that is so rigid that it requires every transaction to be accomplished in the same mold. With a problem of the dimensions that are before us, I think we will need some flexibility in being able to accomplish what Congress wants.

Senator KASSEBAUM. Well, I am not necessarily saying that I think there should be a blanket policy. I can understand some flexibility, but I think it is important to at least have some guidelines that could be used in every transaction.

It is my understanding that there has in general been a blanket policy that the purchase of a large thrift could—that a large thrift would be purchased en bloc, rather than separating out bids for branches.

And instead of taking individual deal——

Mr. ROBSON. If I could defer that question to Mr. Seidman, because the FDIC's policy now governs those kinds of transactions, and I think he would be better equipped to answer that.

Senator KASSEBAUM. Mr. Greenspan.

Mr. GREENSPAN. Just let me add something quickly.

The type of issue you are raising, Senator, really gets down to the considerable details that the FDIC and the RTC will be involved with in trying to meet these extraordinarily difficult goals that the Congress and the Oversight Board have imposed on them. Let me just underscore the notion that they need flexibility to find out how to calibrate what particular subsidiary or what particular block of assets should be handled in a certain way, and it is going to depend on the individual institution, it is going to depend on the market factors, it is going to depend on the locality, and I would think that it would be very difficult for us to formulate a specific set of guidelines which would be useful. In other words, we do generic guidelines, but I think the complexity of this issue is such that flexibility is absolutely essential to meet the goals that the Congress has set forth in the legislation.

Senator KASSEBAUM. I have to leave. I just would make one further comment on the Regional Advisory Boards. I understand, Sec-

retary Brady, you commented that you had many applications to sort through.

Is there a conflict of interest standard that the Advisory Boards, Regional Advisory Boards, would have to adhere to in the same manner as the conflict of interest standards everyone else is on the RTC?

Mr. BRADY. There is a conflict of interest standard, and we have hopefully applied it accurately and with judgment to the first two people that we have selected for the Oversight Board, and we will continue to do it on members of the Advisory Boards.

The CHAIRMAN. We are right up against our time limit.

Senator Metzenbaum, I think there is time for one question to Secretary Brady before we excuse our two Cabinet members, and then if you want to address further questions, you can do so.

Senator METZENBAUM. First, Mr. Chairman, let me congratulate you on your concern about the past deals that were made, about 179 of them, in 1988 and to say that you supported that concept and concern I had expressed on the floor of the Senate and the House supported it and the language is extremely strong, and I believe that the scandal that we now see at HUD may be—and I am not certain of the facts because I can't get the facts—may be as nothing compared to the scandal that may erupt when we find out how these 179 deals were made in the closing days of the 1988 year, because when you see a deal where somebody can put in $160 million cash and $155 million in a promissory note and get $5 billion—no, excuse me— $1½ billion in future tax benefit.

To get the Government to come in with future payments of $4 billion, over $4 billion and an additional $5 billion governmental risk, it becomes obligatory to find out how these deals were made and whether we ought to go back and restructure them and open them up, and Congress, thanks to the support and the leadership of the Chairman of this committee and the Chairman of the House committee and the members of both committees, gave the Oversight Board and the RTC very specific instructions to go back and look at those deals and reopen them and tell the American people what they are about and to renegotiate them.

You have that authority, and, frankly, Mr. Secretary, if the RTC Board doesn't do that and if the Oversight Board doesn't support the RTC Board in doing that, although the final authority, I must say, under the law is with the RTC Board, not with the Oversight Board, if you don't, then the American people will have been let down and there will be a huge question mark lasting for many years in the future.

And so I don't come to ask a question, but just to express my view that there is such a strong obligation to go back and look at these deals and how they were made and how this giveaway of present as well as future billions of dollars of the American taxpayers were made. I think that is a responsibility that I feel confident, knowing of your past record in the Senate and as well as a public official, that you will be very supportive of the RTC and their meeting their responsibility.

Mr. BRADY. Thank you, Senator Metzenbaum.

The CHAIRMAN. Let me now excuse our two Cabinet officers, as they must go over for the joint session. We will ask Mr. Robson and

Mr. Greenspan to remain. Let me thank our Cabinet officers for their testimony and for their service. Let us also expedite getting them out of the room, if we may, so that they can get over for the lineup for the joint session.

Mr. BRADY. Thank you, Mr. Chairman.

Senator DODD. Mr. Chairman, I want to offer my apologies to the ensuing panels. I am committed to go to the joint session as well.

I commend you on the witnesses that you brought here today, and I will look forward to reading their testimony and following the questions in the record, but I, too, have to leave for the joint session.

The CHAIRMAN. Let me ask those that are remaining, to find seats or get situated so that we can resume.

I want to say that we have tried to tailor our approach this morning to the unique timing requirements of the joint session of Congress to which the two Cabinet officers must be present, and we appreciate the patience of all others in working around that format.

At this particular time I would like you, Mr. Robson, to give us a little sketch about your successor, Mr. Kearny. Please tell us about his background and why he was selected. In a sense, introduce him to us and to a very important group of press people that are available, so that we have some sense as to who is going to be serving as the Executive operator of this Policy Oversight Board.

Mr. ROBSON. If I may, let me read from the press release that we made yesterday, and let me just say as a preface to that we are simply delighted to have somebody of Dan Kearny's quality come to take the Oversight Board presidency.

He has distinguished service in the Government as the President of Ginnie Mae, as a member of the HUD organization and with OMB. He has a distinguished career in business as a member of Salomon Brothers in their mortgage banking area and most recently with Aldrich, Eastman & Walch up in Boston. He has additional experience in the state as head of the Illinois Housing Authority, and we just are delighted to have him.

He has degrees in law, business, and economics, one of them from Michigan State——

The CHAIRMAN. Duly noted by the Chair.

Mr. ROBSON [continuing]. And apart from that, we are just delighted to have him.

The CHAIRMAN. Let me now go through a number of items that need a little more elaboration, I think, and I appreciate the presence of both of you.

Let me start in on the issue that Senator Metzenbaum raised, and that is the careful reexamination of the 1988 deals.

Where do we stand in terms of that requirement in the law that each one be reviewed and modified if appropriate to do so?

Mr. ROBSON. The Oversight Board's role in that is not the doer, and that really, as Senator Metzenbaum pointed out, is the responsibility of the RTC. What we thought it was important to do to get that process started correctly was to develop a methodology of approach to the analysis of these 180 different transactions and to—instead of just picking each one up and trying to look at it as a separate item, to see if we could figure out a method of approach

that was likely to have the highest payoff—should we look, for example, first at yield maintenance transactions in all of these? Should we look at tax benefits—and try to get some prioritization in the way that these situations are examined and from that determine where the biggest payoff is and then what our opportunities are to reshape any of those deals as necessary or appropriate.

The CHAIRMAN. But in terms of giving a clear signal to the RTC that this is a priority responsibility, any policy guideline that you needed to give them you feel you now have given them? Are they now free to move forward and have been asked by you to move ahead?

Mr. ROBSON. They were asked to deliver to us by the 30th of September, Mr. Chairman, their proposal with respect to the methodology. My understanding is that that has now been received by our staff and we are in the process of looking at it, but I would assume——

The CHAIRMAN. You will have to sign off on that, I assume. I mean, you are getting it back because you want to review it and you want to agree that from a policy point of view that is the format that is to be used?

Mr. ROBSON. I think we want to sit down and agree with the RTC that this is the most sensible way to do this analysis. This will get it done the quickest and the most effectively, and we would be expecting to get that process behind us reasonably soon.

The CHAIRMAN. Within 30 days, would you say?

Mr. ROBSON. I would hope we could.

The CHAIRMAN. Yes. I think it is very important that you move ahead on this because every day that passes, things that have happened get further behind us. So I think it is very important to get that nailed down, and your clear statement to us is that is the intent of the Oversight Board and that a 30-day time frame seems reasonable from your vantage point.

Is that right?

Mr. ROBSON. I hope so.

The CHAIRMAN. Well, I know you hope so, but I mean is that sort of what your expectation is? If it is different than that, I want to know about it.

Mr. ROBSON. I think we can get that job done.

The CHAIRMAN. Very good.

Now, with respect to this funding issue that has arisen in terms of running past the fiscal year, the bottom line of all of this, as I understand it, is that from a budget point of view—forget Gramm-Rudman—but from a budget point of view the 1990 deficit will in a sense go up by $8 billion over what it might have been had those monies been expended before the end of the fiscal year, and charged against fiscal 1989.

Mr. ROBSON. The impact of the expenditure of that money in 1990 would be to, as you say, increase it over what it otherwise might have been, but that will of course have to await the passage of the next 12 months.

The CHAIRMAN. Well, the fact is——

Mr. ROBSON. It will have an impact in 1990 of $8 billion, plus, yes.

The CHAIRMAN. Going back to the dispute that we had about direct Treasury financing and trying to do some of that in the 1989 fiscal year, part of the rationale for that was to post that part of the cost of problem resolution to the 1989 deficit figure, if you will. So it looks as if what is going to happen is that, of that $20 billion, $12 billion of it will in fact be posted against 1989 and $8 billion of it, having gotten jammed against that deadline, will from a Federal deficit point of view be posted in fiscal year 1990's deficit.

And the reason that is important to note is that anything that is as large as an $8 billion add-on, you know, is not a kind of number that you find in a rounding here. That is a big number, and people will wonder why the 1990 deficit will be higher than otherwise anticipated in terms of just the reported figure, and that is the reason why.

Now, that is my understanding of what just the budget posting impact of this is, and you are nodding in the affirmative as well.

Mr. ROBSON. That is mine as well.

The CHAIRMAN. All right.

Let me move on to one other thing, and that is I want to really understand the bidding process a little bit better from a policy point of view. I realize you are on your way out the door. Mr. Kearny is on his way in the door. But I want you to give me a sense, if somebody out in the country wants to get into the act to bid for these properties in one area or another, what do they do? What does your procedure set up as a way to create a wide open, fair and equal entry opportunity for anybody that wants to bid on these properties?

Mr. ROBSON. Let me say, first—the Oversight Board—does not conduct the bidding, and the process of bidding that is now in place comes under policies which the FDIC has developed.

The CHAIRMAN. But don't you have to ratify those policies and procedures?

Mr. ROBSON. In the absence of a specific Oversight Board policy in any particular area, Mr. Chairman, the policies of the FDIC govern, and that is expressly provided, as you may recall, in the legislation, so that there are areas in which the Oversight Board has not yet adopted specific policies in those areas, one of which is the particular bid procedures. Procedures and policies of the FDIC apply until the Oversight Board has adopted its own.

The CHAIRMAN. So as I understand that, then the Oversight Board has not undertaken at this point to set policy in that area. The FDIC is operating under the rule that you say. At least for now they establish the policy, and I assume then that you have the right of review and the right of acting at some point, if you wish, to say, look, we want certain modifications in the policy applications and procedures.

Is that fair?

Mr. ROBSON. That is correct, and in fact, one of the major areas that we are addressing in the strategic plan is the bidding philosophy and the bidding process, and so we have already undertaken to examine it. We have not yet promulgated a specific policy.

The CHAIRMAN. All right, I understand. I just want to go a bit further, and then I will call on Senator Garn, because I want to nail this down.

Insofar as the Oversight Board's view would be, have you seen problems in the past in the bidding area? Is that an area of any particular concern to the Oversight Board? Have you debated it internally? Is that seen as a possible red flag issue because of things that may have occurred in the past? How would you characterize the viewpoint that the Board has, on the question of how the bidding process is worked?

Mr. ROBSON. Well, I think it has not been an issue that the members of the Board who were here today have deliberated. I think that our goal is the same as Congress', and that is to see that the transactions go forward in a way that maximizes the return——

The CHAIRMAN. Right.

Mr. ROBSON [continuing]. And generally that you do better in that regard if you have a competitive system that is truly competitive, so that my guess is—and I can only speak for myself on that subject—that we will have a policy that will be liberal in that respect.

The CHAIRMAN. In this area of bidding and solicitations for people who want to acquire properties, I think this is a critical point and such a sensitive area, that has the potential for abuse. It may even be an unintended abuse that somebody can get into the system more readily than somebody else who would like to, but who is out there and can't figure it out or just gets left out of the process. So let me stress to you and to Mr. Kearney that I think it is very important that the Oversight Board go through this bidding process in terms of policy and procedure, review what the FDIC has in mind, and the RTC has in mind. If you agree with it, then I think you ought to ratify it at the policy level. If you don't agree with it, you better identify the differences and work them out.

And I don't say that in any confrontational tone. I just think it is such a critical element here of what has to be done. I don't have it in front of me right now, but in terms of the basic thrifts packages that were put up for sale or bid, it looks as if there were a certain number of bidders that were carryovers from the old days, and maybe that is the way it has to be. But I am interested in knowing how well we are opening the process up so that anybody who is a feasible and sufficient bidder or buyer, respective buyer out there has the chance to get into the game on an equal footing with everybody else. I think you are going to get better prices that way, because you will have more competition for the assets. But I think fairness and doing away with any fact or appearance of somebody having an inside track is essential in this situation.

So I would hope that the Oversight Board would perhaps devote a meeting here very soon to the question of a review of the bidding process just so you are all clear on it, and it may be fine as is. If so, I think you need to put your stamp of approval on it, and if there are problems with it prospectively, then I think you know you have got an obligation to do something about it.

Chairman Greenspan, do you have any response or thought on that?

Mr. GREENSPAN. I would fully concur with your comments, Mr. Chairman.

The CHAIRMAN. Mr. Robson, anything further that you feel a need to say on that?

Mr. ROBSON. I don't think so, Mr. Chairman.

The CHAIRMAN. Very good.

Senator Garn.

Senator GARN. Thank you, Mr. Chairman.

Just one question, to go back, that was asked of Secretary Brady about conflicts of interest, and his response was certainly they would avoid them and the appearance of conflict of interest, and I am certainly not going to disagree with his answer, nor do I want to appear to be asking a question that indicates I am in favor of conflict of interest.

But nevertheless I have heard from several different sources that some of the conflict of interest rules that we are dealing with in the legislation could really hamper or prevent some firms from getting involved because of the appearance where there is no actual conflict, and here we are getting to what the Chairman is asking about, how do we maximize the amount of money that we return from these properties.

And my question is, are some of these strict enough that the way they would be interpreted they were actually going to minimize by prohibiting some firms from being involved because they would have the appearance of conflict?

Mr. ROBSON. We are in the process of reviewing just those issues now and trying to balance what I think is going to be a very difficult task, Senator Garn, and that is the desire to have participation from the private sector people and firms that are able to do the job well and can help the process in the interest of the taxpayer, but who also, because of their expertise and the business that they are in, may indeed have some questions of appearance. What we are going to try to do is do our best to sort that out and get a sensible regime that walks those two paths, and my guess is it is not going to be easy.

But that process of analysis is going on right now with the joint task force that Secretary Brady referred to earlier.

Senator GARN. Are there any other examples or provisions in the statute that as a practical matter restrict the ability of the private sector to participate?

Mr. ROBSON. I can't think of any right now, but let me respond for the record, if I may, on reflection. But I don't think of any sitting here.

Senator GARN. I would appreciate it because the Chairman and I are driving towards the same point, as full participation, and I again don't want to indicate in any way that I want any conflicts, but I also don't want people excluded who could save the taxpayer money because there is some appearance that is of no conflict at all and yet we take lower prices and less money for the taxpayer because we are going to be so pure that we exclude people, and I agree with you. It is a difficult process in where you draw that line.

But the Chairman and I both agree fully that we want to maximize this and eliminate the potential for this problem going beyond the $50 billion.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me pose a couple of questions. Senator Cranston was not able to be here this morning, but he has some questions that he is particularly interested in, and I am going to raise a

couple here and then I will ask that the remainder be answered for the record.

As far as the affordable housing objectives, one of the RTC's five objectives is to preserve affordable housing. The conferees concluded that if the RTC performs its mission well, the goal of affordable housing will enhance the Corporation's ability to expedite the sales of residential property and therefore benefit the taxpayers. But as nearly as we understand it, the Oversight Board has yet to publicly set forth how it plans to carry out these specific housing goals.

So the question off that is this. What assurances can you give the committee that the affordable housing objectives will be met through the disposition process, and what are the various administrative and regulatory steps which must be taken before a fully operating disposition program is put into effect?

Mr. ROBSON. I find it hard to answer the question of whether we can give a guarantee that all of the objectives that all of the members in Congress had in mind will be satisfied, but we will try to develop a process and a system and a set of policies, Mr. Chairman, that will do our best to execute a complicated scheme for dealing with the low income housing.

I thought that Secretary Kemp addressed this very well and I think he expressed the spirit of the Oversight Board insofar as its interest and determination to get that job done right. It will be a set of procedures and policies that will govern the low cost housing provisions and the disposition of properties that fall within the dictates of FIRREA. That will be and is now in the process of being worked out between the Oversight Board and the RTC, and I might say in consultation with housing groups, people with interest in those areas from the outside.

So the process is going forward, and we are certainly going to do our best to be observant and responsive to what Congress wanted done.

The CHAIRMAN. Well, as you know, the provisions of the law require the Corporation to give public agencies and nonprofit organizations a "first look" at residential property, and that first look would give these buyers just a little more time to see if they could arrange financing so that they could keep the property as affordable housing. It doesn't give them any edge on the price, but it gives them the opportunity to know it is available and see what might be worked out on a competitive basis, and there are many private and public groups that have expressed a great interest in getting this information as soon as possible on eligible residential property held by the RTC.

And I am wondering if you have set a schedule for implementing the first look requirement and where we stand on that.

Mr. ROBSON. The policies that deal with the low cost housing are ones that we expect to be contained in the strategic plan, which Secretary Brady mentioned earlier will be put out for public comment probably within the next 30 days, Mr. Chairman, so that there will be an opportunity for the world to take a look at our thoughts on that.

In addition—and I am sure Mr. Seidman can embellish this—he will be setting up procedures that will in a sense quarantine those properties so that the first refusal rights can be appropriately exer-

cised and that the groups and individuals who are specified in the legislation have an opportunity to have a crack at them as the law provides.

The asset disposition process is really just getting underway, and I think we are going to have to confront that issue pretty quickly because assuredly some of the assets that are going to be left and disposed of are going to fall within those categories. So my guess is it will be sometime before the end of the year that we are going to have that process in place.

The CHAIRMAN. Along this line of discussion, I have some additional questions from Senator Cranston. I am going to ask you to respond to for the record in full detail, and I will expect you to do so.

The CHAIRMAN. Chairman Greenspan, let me ask you this. You have got a very busy job being Chairman of the Fed quite aside from these new duties that you have been asked to take on.

As you now become more fully involved in this new assignment as a member of the Oversight Board, I am wondering if you see any problems or concerns. Your vantage point is different. You really bring a more independent view, I think. Not that the others aren't independent in their thinking as well, but you in a structural sense are even more so. I would just like to ask you if you see any areas of particular concern or areas that strike you as being ones that we need to pay more attention to, that we may need to be more vigorous in our oversight about, that we may need to undertake to understand better or to see as areas that will be particularly difficult in terms of implementing the law as it is written and intended. I would like you to give us any sense you may be developing along that line, that would let us have some value from your expertise and independent vantage point.

Mr. GREENSPAN. I think the major problem that we at the Federal Reserve are concerned about is that this extraordinarily large shift in assets doesn't inadvertently create imbalances in the system which induce instabilities and other problems. So far I haven't seen any evidence that that is likely to be the case, but the major problem that I see as a member of the Oversight Board is how do we basically square the various different complex tradeoffs which are in the legislation.

It is very difficult to make key judgments about whether or not a piece of property is put on the market or not. It is by no means clear that withholding a property from the market in any way elevates the price of all other structures. Participants in the market, when we are dealing with properties, know what is there. In a sense, you cannot hide a particular property. It is visible and in the public domain, and the mere fact that we would withhold or somehow hold back in selling it is very unlikely to create any buoyancy in the existing property values in the same sense that we know, in looking at, for example, the Commodity Credit Corporation, that very large stocks of wheat or cotton held by the United States Government are in a sense insulated from the market price.

All evidence we have suggests that those stocks of grains and cotton and whatever suppress the existing price, and one must assume the mere existence of all of these properties out there is basically suppressing the price and that the important tradeoff

that we have got to consider is how do we make judgments as to what the actual price effects are, and therefore what is the appropriate pace at which various dispositions take place because we are obligated by law to be very conscious of the local real estate markets and the impact that we may have, while at the same time being required by law to maximize the value for the American taxpayer in the disposition of these properties.

It is an issue which I suspect throughout the history of the RTC will never fully be resolved. It is going to be the most crucial, delicate tradeoff that we have, and I suspect, as Senator Garn suggests, that there will not be a single transaction which will be made by the FDIC acting in the RTC configuration which will get unanimous support. Every transaction will be criticized, and the problem that we have to be aware of is to try to understand from the criticisms we are getting what are the really fundamental questions of policy, and that is not going to be an easy task for any of us.

The CHAIRMAN. Well, I agree with your point, and it is well-stated, but I think it also reinforces an earlier discussion and that is that the soundness and the fairness and the completeness of the bidding process is one of the best ways to take and minimize the Monday morning quarterbacking that is going to go on about whether or not something was or wasn't properly disposed of. I think the more the public notice is out there, the more it is available to all comers.

You know, it is one thing as to when you make the decision to move a particular property in terms of the timing. But if everybody has got an equal shot at it, then it seems to me that takes away one very material reservation that can arise later when somebody says, well, you know, somebody got it for too low or too high a price. To the extent that the bidding process is just as fair and as clear-cut and as open as it can be, I think that helps you enormously with what is otherwise always a difficult issue.

So I just want to stress that again.

Let me ask you, related to that, about something which we are reading more and more stories about. We know we have had a major real estate collapse in the Southwest and regions of the country that have been hammered over a period of years. There is more being said and reported about real estate problems in the Northeast and bank balance sheet problems particularly related to that. In fact, we are going to look at that question tomorrow here.

But I am wondering about a situation where you have got a declining real estate market rather than a market that has been hammered down such as we might find in Texas. If you have got a situation in the Northeast where you have had now a very observable decline in market values, I wonder what the implications might be of real estate holdings, that would be in the possession of the RTC, that fall into that area. First of all, do we have any sense as to what percent of the assets are in that region, roughly speaking? Is it 10 percent, 5 percent, more, less? Do we know?

Mr. ROBSON. Mr. Chairman, I am advised that the RTC testimony does have an exhibit and data in it that addresses the question you ask.

The CHAIRMAN. I would like to know from a central banking point of view, and from the perspective of Mr. Greenspan, if the

fact that you may have a falling market rather than a fallen market, and if there is any substantial overhang of property that falls into that kind of a dynamic situation, if that presents any special concerns here.

Mr. GREENSPAN. I think that it is fairly clear that the slowdown in New England, which has been fairly general, not only in real estate but in a number of other areas, has had effects on depository institutions in the area and, as is our obligation, we are watching fairly closely what is going on.

The CHAIRMAN. Senator Garn, do you have any other questions for these two witnesses?

Senator GARN. No, Mr. Chairman.

The CHAIRMAN. If I may, then, just exercising a prerogative of the Chair, before we excuse these two witnesses I want to just for a moment make another relevant comment on another major issue that is not the precise focus of today's hearing.

There is a lot of discussion about the degree to which, perhaps, there ought to be an overhaul of the Fed structure or the membership of the Federal Reserve Board; whether the Treasury Secretary is there, and what relationships with the Congress might be changed.

I have not been a part of that debate. There are legislative vehicles that have been brought forward by various members of the House, and so there is something of a debate that is ensuing. I would like to just make two observations about it.

One is that I think the longer it takes for us to fail to deal with the fiscal problem, the worse off we will be. We are clearly not dealing with the problem properly, in my view—we are masking it with a lot of accounting gimmicks, and so forth. The lead story in the Wall Street Journal yesterday I thought very aptly characterized the fact that our fiscal budget situation is still out of control and deficits are still much too high, much higher than we say they are, and we still have a trade situation that I think is extremely serious. It is not improving to any appreciable degree at this time; in fact I think it likely to get worse with the dollar now back up at higher levels, albeit with some lags.

But having said that, I feel very strongly that it would be a mistake for people to assume that somehow we can, no matter who is running the Fed, magically use the Federal Reserve strategy and policy moves, and somehow solve all these other problems. I think for a long time we have lived with the myth that perhaps we can do that, that we can be irresponsible in the area of fiscal strategy and irresponsible with respect to the net results in trade, policy which in part flows out of the fiscal situation, and other major shortfalls in terms of a low savings rate, low productivity rates, and high real costs of capital, and so forth, and somehow look to the Federal Reserve as the magic balance wheel that can come in and somehow adjust out all of these structural problems and give us a monetary policy that somehow fixes everything and presumably gives us low interest rates at the same time.

I wish it could work that way. It doesn't work that way, so anybody that holds on to that idea I think is fooling themselves. Thinking that way also takes us away from some of the practical solutions that we need to take.

That isn't to say that any given monetary policy is precisely the right one. It is very hard to know that at the time, or even after the fact, but my own thought on the matter is that I don't think we should be looking to the Federal Reserve as the place to somehow, through interest rate and money supply manipulations, solve all these other problems. It can't be done. I think increasingly the Fed has less and less maneuvering room, and I am very worried about it. So I would hope that we would tend to look to the structural problems themselves directly in terms of the kinds of solutions that are needed.

Second, with respect to the independence of the Fed, I happen to be of the view that the independence of the Fed is very important and serves us well in the sense of having a balance in our system that is there for a purpose and which carries certain benefits with it.

That isn't to say that a perfect job is always done there or in any other sector of the government, but I would be reluctant to see moves taken that would tend to politicize the Fed more than it otherwise is in the normal course of events. I think putting a Cabinet officer on—no disrespect to the one that was here, I have great respect for Nick Brady—is probably not a sound idea. I know others have a different view on that, but as long as the debate is underway and the Chairman of the Fed is here, this might be an appropriate time to add some additional voices to that discussion.

I would hope that as we go down the road here that the Fed under your leadership, Mr. Chairman, and with your colleagues over at the Fed, will feel always sufficiently able to say publicly that if you are being asked to do more in solving broad economic problems than monetary policy or money supply management by themselves can do, that you will be very frank to say so. That way, we don't end up with people living with a notion that there are easy ways to make major adjustments when in fact the policies that require that lie in other areas, for the most part, and steps have to be taken to deal with that.

So I don't know if you want to make any comment or not. Senator Garn I think may have thoughts of his own that he wants to express, so let me just call on him first and then you are welcome to make any response that you want.

Senator GARN. Mr. Chairman, I did not know you were going to bring this subject up, but I am glad you did because this is a subject that I have felt very strongly about for a long, long time.

When I look back at the history of the Fed, until, oh, probably 15 to 20 years ago, most people had never heard of the Chairman of the Federal Reserve Board, and that was because the job, relatively speaking, was easy because fiscal policy in this country was much more restrained. We did not have these huge deficits and annual budget fights, and I said that to Chairman Volcker once before, that his job had become much more difficult because of the things you were talking about, the expectation that Congress could be totally irresponsible and all we have to do is turn to the Fed and let them play with the M's and they can solve the problems that we create.

So when it came about that Mr. Volcker was called the second most powerful man in the country, I said, well, that is unfortunate,

not because of Paul Volcker or Alan Greenspan, but the point of how we have mishandled our fiscal policy to the point that the Fed is looked at as the second most powerful institution in this country. Something is wrong with the balance between the fiscal and monetary policy when that occurs, and that continues.

Again, I am not speaking about an individual, but the position of Chairman of the Fed in my opinion has become symbolically too important because of our lack of responsibility here in Congress.

So when I see Lee Hamilton and others now reviving ideas as if somehow these are new ideas, over the years that I have been here I have seen proposals to put a farmer on the Federal Reserve Board, you have got to have a representative of agriculture. You got to have a representative of small business. You got to have a representative of housing. They have come and they have gone over the years, and to have certain designated seats on the Fed for a particular segment of the economy, including putting the Secretary of the Treasury back on the Board, including having the term of the Chairman concurrent with that with the President so that the President can totally politicize it by saying I will pick my Chairman of the Fed, he is subservient to me.

I fail to understand why these ideas continue to come up because I totally support the independence of the Fed. That does not mean that I always agree with the Fed. I certainly have not at times, but to politicize the Fed, to make it subject to the whims of the economic popularity at the time is just inconceivable to me that people would do that.

I have used the example before many times, and I will use it again. To politicize the Fed, to have this Administration or any other Administration or Congress—I have even heard proposals that we put Congressmen and Senators on as at least ex officio members of the Federal Reserve Board—is just unbelievable to me. It is very much like when I was Mayor of Salt Lake City, that I needed a new fire chief. Now, I don't think anybody would have thought it was responsible if I went out to the Utah State Prison and interviewed all of the arsonists out there to see who would be the new fire chief. [Laughter.]

And so to even consider putting members of Congress, the arsonists of fiscal policy that have created this incredible debt and deficit and all the budget problems, and we want to turn over the management of monetary policy to the arsonists? Absolutely not.

So, Mr. Chairman, I am glad you brought it up. Let the House and Mr. Hamilton fiddle around with this as long as they want, if it comes to the Senate I would suggest that with the Chairman and the Ranking Republican that there aren't going to be any changes like that on the Senate side.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, Senator Garn, we had not discussed this ahead of time, but I must say, with respect to your pretty tough description of the Legislative Branch, you make it sound as if the Legislative Branch by itself could create the fiscal dilemma we are in. Certainly that is a major part of it, but not that alone. The Executive Branch obviously is an equal partner. There isn't a dime of spending that Congress authorizes that gets spent that the Presi-

dent, whoever the President happens to be, doesn't agree with. That is the nature of our system.

So I think we have got a shared responsibility down the line.

Senator GARN. The opposite of that is that no President has ever spent a dime not appropriated by Congress.

The CHAIRMAN. I think we are saying the same thing. I think it takes two to tango, and you have a long ongoing tango. In fact I think the principal people that have sort of been elbowing the Fed recently on its policy have not been so much members of Congress. There are these legislative ideas, but they have been very prominent Executive Branch people. Not the least of these recently was the Director of Management and Budget, who, as you know, clearly put an elbow into the Fed.

So I think it is enough said to acknowledge that the fiscal dilemma arises from a collective failure of the Executive and the Legislative Branches. The bottom line is that we are way past the point where the Fed by itself can fix it, and anybody that lives with that myth I think lives with a very dangerous notion. If the international lenders and observers, that we now have as such a major part of our everyday financial picture, ever get the sense that the monetary policy in this country is going to get politicized in some major way then we are going to have a very major problem on our hands. We will find that out about as quickly as it takes the foreign exchange markets to react, and they can react now literally in split seconds.

So in any event, I think it was important to get some of that out into the discussion today because it has become a broad topic of discussion. We have got enough other issues going on, with catastrophic health insurance and reconciliation and budget bills and RTC oversight that it is very difficult, sometimes, to be able to bring these issues forward simultaneously and in an orderly way.

With that, we may have questions for the record for the two of you. I am going to thank you for your testimony, and I am going to excuse you at this point. We will now invite Mr. Seidman to come to the table.

Mr. ROBSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let me invite those that are coming into the room to come in and find seats and get situated and those that are leaving to do so.

We have a very important witness here now. Let me just say before calling on Chairman Seidman that we have now heard from the Oversight Board that is charged with setting the broad policy and approving the procedural arrangements under which the RTC is to operate. The day-to-day operating responsibility—and it is an enormous responsibility and a very difficult one—falls upon the RTC itself and falls directly upon the shoulders of the officer of the deck, the person in charge, of William Seidman.

I think he brings to that assignment, as many of us have said before, the background and the professional heft that it takes to tackle this job. It is not an easy one, particularly when you have got in addition to that all of the ongoing activities of the FDIC to carry out, and that by itself is at least a full-time job without additional duties.

And so the committee recognizes the extraordinary size of these multiple tasks that you have taken on, and we appreciate the fact that you are doing this work and are proceeding accordingly.

We are going to make your full statement a part of the record, but I would like to invite you to make any initial summary comments that you wish and of course in that process reflect on anything that has gone on earlier this morning that you may want to add to your summary comments.

STATEMENT OF L. WILLIAM SEIDMAN, CHAIRMAN, RESOLUTION TRUST CORPORATION, WASHINGTON, DC

Mr. SEIDMAN. Thank you, Mr. Chairman, Senator Garn. It is a pleasure to be here.

We said from the beginning that the challenge of operating the RTC would be large. A little experience shows us that it will be even larger than we thought, yet much has been accomplished. But much more remains to be done before the RTC has a full staff and all of its operating policies and procedures in place. We anticipated the task would be difficult, and it is.

Let me comment on general operating policies.

From the day the bill was enacted, the RTC adopted FDIC policies as the interim operating policies, and in that way we could begin work immediately. The policies provide a general guidance on resolution transactions and asset dispositions and management. These policies will be followed unless they are in conflict with policies adopted by the Oversight Board or until suspended by more specific or permanent RTC policies. Certain complex provisions have been specifically prohibited.

First, with respect to ethics and bribery, which you asked about, as an interim measure the RTC Board acted at its August 9th meeting to extend the FDIC's standard of conduct regulations to independent contractors of the RTC to the extent those standards would reasonably apply to the activities.

Then the Board took further action on September 26th of adopting an interim statement of principles of ethical conduct for independent contractors. That statement is in effect now even though it is also out for comment. We are working with the Oversight Board's joint policy group towards the publication, in early November of proposed regulations in this area. We foresee no obstacle in having final regulations in place by the statutory deadline.

With respect to actions to prevent bribery of officials, the FDIC has traditionally relied upon three tiers of protection—internal controls, auditing, and encouraging the reporting of suspicious actions. The same course of action will be followed by the RTC.

POLITICAL FAVORITISM AND UNDUE POLITICAL INFLUENCE

The FDIC has a tradition of independence and avoidance of political favoritism and undue influence with respect to its activities. Working with the Oversight Board, the RTC plans to develop specific written policies and procedures that will draw upon current FDIC policies. In the interim, key positions in the RTC will be manned by career FDIC employees operating in our traditional manner.

RESOLUTIONS AND OPERATIONS

As of September 30th, 283 thrifts have been placed in the conservatorship program. These institutions had total assets of $112 billion and liabilities of $124 billion. We estimate that the losses in these institutions will total $35 billion, or about 31 percent of gross assets. The estimated loss rate on average had declined for the more recent additions to the conservatorship program. Those institutions placed in conservatorship prior to March 31, 1989 have estimated losses of 36 percent as compared with only 21 percent for those placed in the program after March 31, 1989, and that is a very encouraging number.

Our program of replacing high cost funds has been successful in lowering the cost of funds for all the institutions. The Southwest premium has been reduced by about 50 percent. On a recent date, only one out of the 35 top ratepayers was in the RTC. The availability of low cost funds has decreased significantly the upward pressure on conservatorship of S&L's with respect to interest rates. As of September 30th, with funding provided by the Oversight Board, the RTC had made secured loans to 151 conservatorships in the amount of $8.1 billion. The saving to the RTC and, ultimately to the taxpayers is estimated, to be $118 million on an annualized basis.

The RTC is also the lender of last resort for S&L's in conservatorship. As of September 30th, the RTC has provided $.5 billion in emergency liquidity to 41 conservatorships that were unable to meet their daily liquidity needs. The RTC continues to maintain a reserve of $900 million for future emergencies.

As of September 30th, the RTC had disbursed $1.8 billion to resolve 24 institutions. It is important to note that the $1.8 billion is not the ultimate cost to the RTC. That will be determined after deducting collections that are realized through the liquidation of assets from those institutions. Twenty of the 24 resolutions have been handled as insured deposit transfers, and the other four were payoffs.

In addition, the RTC has allocated $8 billion for the resolution of five large institutions. Those five will be structured as clean purchase and assumption transactions. Bidder interest in these five transactions is strong. We expect the transactions will be completed by the end of next week. We have accrued the cost on our books of those transactions in accordance with advice from OMB.

I will take a moment to talk about those transactions, if you would.

We had intended to conclude those transactions during the current fiscal year, the year that just closed. Frankly, we ran into some real problems with respect to who could bid and what the bidding standards were. This was partly caused by the fact that the Comptroller had put out a different standard for bank capital than we had had before and partly because it was a new operation and we simply didn't get a clear enough indication out to the public of who could bid. As a result, we thought the bidding process had not been as open and clear as it should have been. That is why we decided it was vitally important that we give more time to make the process clear and ensure that all bidders had a chance to come in

and bid on these institutions. We were not able to do that and complete it by September 30th. Since it was clear to us that if we didn't have that open and wider bidding process, we were likely to get a lower bid, we thought it was very important to defer it.

We conferred with the Office of Management and Budget, and they said for the purposes of Gramm-Rudman and other budgeting purposes, it didn't make any difference.

However, we had these institutions and we thought in order to make it clear what we were going to do with the money we would put the money in the institutions, which is where it will go when we conclude the transactions. Since we had the money in the institutions, we thought we should invest it in the Treasury so we wouldn't lose any interest. The Treasury was kept fully informed of this. However, when we came to conclude the transactions, they came to the conclusion that they could not accept it as interest bearing money. Our lawyers don't agree with that, but there was no time to have a big discussion on it. Since they were the one running the bank, why, we simply left the money as allocated. /

I don't think it has any material effect on budgeting insofar as Congress is concerned. We took the action because we thought it would save the taxpayers money by having a more open and better bidding process.

The CHAIRMAN. Could I just ask you two questions at that point?

Mr. SEIDMAN. Yes.

The CHAIRMAN. And I appreciate the elaboration from your vantage point.

Did opening up the bidding process induce additional bidders?

Mr. SEIDMAN. Yes, a substantial number.

The CHAIRMAN. So we have got more bidders in the act now?

Mr. SEIDMAN. We do.

The CHAIRMAN. So that decision——

Mr. SEIDMAN. We have very strong interest and a lot of bidders. There have been reports that we did it because there weren't any bidders, and that simply is not true. But we came—there are a lot more bidders now.

The CHAIRMAN. Yes. Can you give me a rough number?

Mr. SEIDMAN. We have about 12 more well-qualified bidders, and these are very large transactions. So that is a substantial number.

The CHAIRMAN. So 12 more came into the universe?

Mr. SEIDMAN. Yes.

The CHAIRMAN. And you had how many to start with roughly?

Mr. SEIDMAN. We had 27. Not all of them went through, but we had 27 bidders at the table. We added 12.

The CHAIRMAN. Now, to make sure that we have a clear understanding with respect to the fact that at least the $7.9 or $8 billion will actually be charged to fiscal year 1990—leave Gramm-Rudman aside—as we discussed with the earlier panel, that has the effect of dropping that amount into the 1990 fiscal year versus the 1989 fiscal year. It would have landed one place or another. It just happens to land in 1990 and will of course increase the posted size of the final deficit by that amount.

Am I correct in understanding that there is some additional amount of money on top of that that also—of the $20 billion that was anticipated to be spent in fiscal 1989 that was not spent, some-

thing beyond the $7.9 billion? I had indications that it might be roughly $10 billion or so in total, not obviously connected to that one thing.

Mr. SEIDMAN. I am not aware of that.

[Pause.]

Oh, we have the liquidity reserve, the liquidity reserve of $900 million which I mentioned, which we had to hold in reserve because we can't be caught without money if depositors want their money, in order to make good on the government guarantee.

The CHAIRMAN. I see. I see, and so by virtue of the fact that you need to maintain that as a reserve, then that doesn't fall into 1989 because it is unspent in a reserve, so therefore presumably it will be either charged to 1990 or some future year, I take it?

Mr. SEIDMAN. That is correct.

The CHAIRMAN. Why don't you continue?

Mr. SEIDMAN. So in summary, the $20 billion has been used as follows: $10.1 billion in resolutions; emergency liquidity, $1.4 billion, which includes the $900 million; and replacement of high cost funding, $8.5 billion.

The 283 institutions now in the conservatorship program are only a portion of the likely RTC caseload. The OTS is expected to give us a list of conservatorship bound S&L's shortly. In the interim, we estimate that the OTS may turn over another 300 institutions to the RTC, and that is fairly close to the indications we have had with them, but no one knows for sure.

This would mean in total that the RTC may handle nearly 600 failures during the next 3 years with combined assets exceeding $300 billion at book value. We have no way at this point to estimate the cost under those conditions. It is just too early to tell. The most important fact is how many institutions will in fact be turned over to us and what their size will be.

As far as other bases for estimating, you have already heard the difficulty of estimating property values, interest rates, and so forth. At this point we have no basis on which we could make a different estimate from the one we have. We merely point out that of the variables, including the ones you have heard about, perhaps the largest is how many institutions actually will be turned over to the RTC and how large they will be in total.

I would point out that one of the reasons it makes it hard to estimate is that the losses in the institutions we have been getting more recently have been much lower than the losses we had in the first ones. Thereby indicating that the worst were taken care of first and that the other ones will have lower losses.

Given all those uncertainties, we know no way to make any other estimate at this time.

The CHAIRMAN. Let me just also stop you there. In your prepared remarks you say, and I quote, that your projections "raise questions about the adequacy of the $50 billion in RTC funding."

Now, you have just conditioned that by all of the variables and the unknowns, and so forth. But you are an honest to God finance man. You have been at it a long time, and you have got a feel for this, and you have been out doing resolutions in the FDIC, and so forth, and I am happy to get a little piece of good news that default levels seem to be somewhat lower in some of the more recent cases.

But as you get your hands around this thing more and more each day, are you comfortable with that $50 billion figure, or are you inclined to think that we are going to overshoot that——

Mr. SEIDMAN. Well, I really have no way to know for sure because I simply don't know how many assets are going to end up in the RTC. That is the number one crucial factor, plus I can't really make an estimate of what the losses will be in the next ones that are put into the RTC.

We see a trendline that shows that the losses are going down. If that levels out, it means one thing. If it continues to decrease, it means another thing. That is why my bottom line is that it is simply just too early to be able to make a prediction. Whatever you do will be a prediction at this point.

I simply wanted to make it clear that there was no way that you could say that $50 billion was enough for sure or that maybe it could turn out to be too much. But the fact of the matter is that we will have to wait. I think 6 months to a year from now a more informed guess can be made, but it will always be a guess.

The CHAIRMAN. All right, why don't you proceed?

Mr. SEIDMAN. We estimate that only 40 to 45 percent of thrift assets will be sold to acquirers in the initial transaction. Thus, the RTC may have to manage the sale of $180 billion in assets, of which $100 billion will be distressed or illiquid assets. That is why I say the task looks tougher all the time.

While the $50 billion represents the current cost of filling the hole in insolvent thrifts, it is not the total cash needed by the RTC. I think this is a very important point that has not received sufficient attention. The RTC may have to acquire $100 billion in illiquid assets out of failing S&L's before they can be sold. Only after these assets are sold will the RTC be able to replace a portion of these cash outlays. Thus, working capital is required to allow time for orderly disposition of assets and to reduce costs. We are working with the Treasury and the Oversight Board on a program using our borrowing power against the assets in the RTC.

The CHAIRMAN. Let me just——

Mr. SEIDMAN. Just to reiterate if I might.

The CHAIRMAN. Yes.

Mr. SEIDMAN. These assets are currently financed by deposits. As the deposits are moved out, we need to get additional financing until they can be liquidated. The $50 billion is the net cost after everything is liquidated.

The CHAIRMAN. Right. Well, that working capital issue, that sounds to me like that could be a dollar requirement that could be some multiple of tens of billions. I mean, what are we talking about—what is the range?

Mr. SEIDMAN. It will be. I think it will be, yes. It will be many billions, and it will be short-term financing, which will be repaid out of the sale of the assets that are in the RTC.

The CHAIRMAN. So are you saying there that in order to accommodate this takeover of assets which can't immediately be disposed of, you are going to need an additional pot of money, and so there will be short-term borrowings? We hope short term. We don't know how long, I take it. But if you got $100 billion—did I understand you to say roughly $100 billion in assets fall into that category?

Mr. SEIDMAN. Well, that is our estimate when we get all the institutions that now appear to be slated for the RTC.

The CHAIRMAN. But if that were the case, let's say that even 25 percent of that were to occur in the same time frame that you are taking them in and there is a lag before you sort of sell them off—if your estimate is right of $100 billion, that could be another $25 billion in working capital that you are going to need to have sort of transactional activity?

Mr. SEIDMAN. That is correct.

The CHAIRMAN. Now, that is a lot of money. I don't know that anybody has anticipated, as you yourself said a while ago, or much talked about the need to have to go out into the market and even raise that amount of money. That is a lot of money to take out of the market.

Mr. SEIDMAN. Well, we have been talking to OMB and the Treasury about this since way before the bill was passed. The bill does provide for this borrowing facility in the RTC. The borrowing will be RTC borrowing with Federal guarantees which, as I understand it for budgetary purposes, does not affect the budget if no loss is expected on the——

The CHAIRMAN. I think that is probably right in terms of the bookkeeping.

Mr. SEIDMAN. Yes.

The CHAIRMAN. But from the point of view of going out into the capital markets and tapping the markets for—and you know the basis upon which I use the $25 billion, is 25 percent of the $100 billion estimated—anything above $10 billion as an add-on in terms of just cash flow requirements is a big number.

Mr. SEIDMAN. Yes, it will be bigger than that.

The CHAIRMAN. Well, I think that is an important fact that you have put some fresh light on here.

Senator GARN. As I remember, though, we provided explicit authority in the legislation to do that, didn't we?

Mr. SEIDMAN. That is correct.

The CHAIRMAN. Yes, I don't think there is any question about that. Obviously, the authority is there. I don't know that we ever got much of a sizing on how much we were talking about. I don't think it was presumed that we might be talking about as much as $25 billion. Now, I don't know if that figure is—or $20 billion or $15 billion——

Mr. SEIDMAN. That will depend a lot on the strategic plan when it is in place. It will depend upon how urgently you want to sell assets as opposed to holding assets off the market. It is all part of the total plan.

The CHAIRMAN. Well, why don't you continue?

Mr. SEIDMAN. Thank you. The longer term challenge for the RTC will be managing the assets that come from failed thrifts and disposing of these assets in a timely and efficient manner.

Our objectives include maximizing returns while assuring that low and moderate income individuals and nonprofit organizations are afforded the opportunity to purchase eligible single family and multiple family housing. It also requires that procedures maximize the use of private and minority contractors.

The Oversight Board is formulating policies to govern the RTC with respect to asset disposition. Our policy until a different policy is developed, is to institute an orderly disposition of assets at market values over time. That is the FDIC policy and the one that we have had in place.

As the largest property owner involved on behalf of the taxpayer, we seek to avoid the adverse economic impact of over-aggressive real estate sales. We do not dump property and never have. All sales will be on a bid basis unless some unusual condition requires other action.

The RTC will have asset management and disposition plans outlining the strategies for disposition of major assets which will be consistent with the objectives of the law and RTC policy.

The RTC will use private sector resources wherever practical, particularly in managing and disposing of complex real estate assets. Our goal is to maximize the use of private contractors.

As a result of the conservatorships and receiverships set up to date, the RTC has inherited approximately 35,000 matters in litigation. The suits range from simple collection of foreclosure actions to large, complex commercial litigation. 40 years ago, the FDIC had 31,000 suits. Today we have reduced that number to 13,000. By proper controls we hope to reduce the RTC caseload as well, though it will still be very high. In-house attorneys will conduct litigation where practical and cost effective, but emphasis will be placed on contracting for outside legal services.

The RTC is subject to oversight, auditing, and accountability to the extent that it is probably unprecedented in the history of Government. This oversight includes the Oversight Board, which you just heard about, two Inspector Generals, the GAO, and Congressional committees. We welcome this oversight.

The conclusion is that the startup of a $300 billion organization will not be trouble free and mistakes will be made. We have demonstrated that to some extent already, unfortunately. We will do our best to keep them at a minimum. Our people are working long hours under great stress to get the job done. We all owe them a debt of gratitude.

Thank you.

[The complete prepared statement of L. William Seidman follows:]

TESTIMONY OF

L. WILLIAM SEIDMAN
CHAIRMAN
RESOLUTION TRUST CORPORATION
WASHINGTON, D.C.

ON

STATUS OF THE RESOLUTION TRUST CORPORATION

BEFORE THE

COMMITTEE ON BANKING HOUSING, AND
URBAN AFFAIRS
UNITED STATES SENATE

10:00 A.M.
October 4, 1989
Room SD-538
Dirksen Senate Office Building

SUMMARY STATEMENT
STATUS OF THE RESOLUTION TRUST CORPORATION

Introduction: Much has been accomplished since FIRREA was enacted. However, much more remains to be done before the RTC is fully staffed with all operating policies and procedures in place. During this start-up period we have worked closely with the Oversight Board to institute policies.

RTC Organization Structure and Staffing: The RTC's major organizational components are the Asset and Real Estate Management Division and the Resolutions and Operations Division. Current Washington staff is approximately 100, with an expected total of about 250. The four regional offices established in Atlanta, Dallas, Denver and Kansas City each will be relatively small, with approximately 100 employees exclusive of accountants and attorneys. Consolidated field sites will be established in each region primarily to administer RTC's asset and real estate management function, and will have the bulk of employees. There are currently about 800 field employees with substantially more expected by year-end. The RTC expects to employ outside contractors wherever practical. RTC staffing will be minimized and will be mostly temporary employees. Even then, RTC could employ anywhere between 5,000 and 10,000 people by the end of 1990.

General Operating Policies: On the day FIRREA was enacted the RTC adopted FDIC policies as interim operating policies, which allowed the RTC to immediately begin its important tasks. The Oversight Board also has adopted policies which are being followed by the RTC.

Ethics and Conflicts of Interest: The RTC Board, at its August 9 organizational meeting, extended the FDIC's "standards of conduct" regulations to RTC independent contractors. On September 26, the RTC Board adopted an interim statement of principles of ethical conduct for independent contractors, developed in coordination with the Oversight Board. We anticipate publication in early November of proposed regulations, and foresee having final regulations in place by the February 5, 1990 statutory deadline.

Bribery: The RTC follows the FDIC in relying on three tiers of action to guard against bribery of an RTC official. These three tiers include the threat of criminal prosecution; internal RTC controls, audits and investigations; and encouraging those suspecting bribery to come forward.

Political Favoritism and Undue Political Influence: We expect FDIC's culture of political independence to carry over to the RTC by placing FDIC employees in key RTC positions and by hiring through competitive government procedures. Working with the Oversight Board, the RTC will establish specific written policies and procedures that will draw on current FDIC policies.

RTC Operations and Resolutions: As of September 30, the FDIC had placed 283 thrifts in the conservatorship program with gross total assets of $112 billion and combined total liabilities of $124 billion. Combined losses are estimated at about 31 percent of gross assets, or $35 billion. As of September 30, the RTC had made secured loans to 151 conservatorships of $8.1 billion to replace high cost funding sources, for an estimated savings of $118 million on an annualized basis. As of September 18, only one of our institutions was among the top 35 highest rate payers. The RTC also has used funds to provide emergency liquidity to 41 conservatorships in the amount of $0.5 billion.

As of September 30, the RTC had resolved 24 institutions and disbursed $1.8 billion to cover insured deposits. There were twenty insured deposit transfers and four insured deposit payoffs. We expect to resolve five large institutions before the second week of October. These will be "clean" purchase-and-assumption transactions in which only good quality assets will be purchased by the acquirer. The cash outlay for these should be approximately $8 billion.

Based on available financial data we estimate that another 300 thrifts may require failure resolution over the next three years, for a resolution total of nearly 600, with combined assets exceeding $300 billion. This will require the RTC to dispose of assets of as much as $180 billion.

RTC Funding Entity: The RTC is exploring various alternatives to provide working capital during the resolution process to purchase problem assets from failed institutions and to carry those assets until disposed of in an orderly manner. The amount of any working capital raised would be limited by the FIRREA debt limit and the value of the underlying assets.

Asset Management and Disposition: The biggest challenge facing the RTC will be properly managing and disposing of the billions of dollars of assets from the resolution of failed thrifts. The legislation requires RTC to sell property in "distressed" areas at 95 percent of market value or above. We have no present plans to lower that threshold. In all geographic areas the RTC will employ systematic and orderly marketing strategies and will avoid techniques that dispose of assets at any price. We therefore believe concerns about "dumping" should be eased considerably. The RTC will depend heavily on the committee process to make credit decisions. Adoption of Asset Management and Disposition Plans will insure that asset negotiations and strategies employed by contractors and in-house employees are consistent with FIRREA and RTC policy. Meeting the year-end real property asset inventory deadline is a real challenge. We are presently analyzing our needs and plan to contract out this function to the private sector soon.

Low Income Housing: The RTC is committed to maximizing the availability of affordable housing for moderate and lower income families. We are setting up communication channels with HUD and other officials to help identify and qualify purchasers for the program, and are exploring the best methods for assisting in sales financing and utilization of secondary market agencies. The RTC has created key supervisory and staff positions in each field office to manage program compliance.

Private Sector Contracting: The RTC's goal is to maximize the use of private contractors. Steps taken or in progress include developing contracting policies and procedures; establishing a senior executive position for coordination; providing contracting management specialists in field offices; and developing a computer data base on all qualified contractors.

Litigation and Legal Services: The RTC has inherited and is monitoring some 35,000 lawsuits and has already reduced expenditures on legal fees. Legal Division staffing will include about 80 Washington and 1,100 field employees, of which 500 will be attorneys. Estimated RTC expenditures for outside legal fees may reach $125 million for 1990. In-house attorneys primarily will direct and control outside counsel.

Accounting and Auditing: The RTC is subject to almost unprecedented auditing and accountability. Oversight includes policy guidance by the Oversight Board, RTC's own Inspector General, FDIC's Inspector General, annual audits by the GAO, and Congressional oversight.

Minorities and Women Outreach Program: We are working to implement this important program as soon as possible. The program will include a commitment to comply with both the spirit and intent of FIRREA's mandate; providing and enhancing opportunities for minority- and women-owned firms to contract with RTC; identification of qualified firms; certification that firms are actually minority- or women-owned; proper qualifications; and execution and monitoring of the contracts.

Review of 1988 FSLIC Cases: Our review will cover 94 agreements involving $110 billion in assets. This is an enormous task but must be accomplished quickly. Most work will be contracted out to private firms to speed completion and assure a credible and impartial review. We believe there are ways of reducing costs and will work with Treasury in exploring funding options.

Liquidation of FADA: Two approaches for liquidating FADA are being considered. These are the sale of the FADA organization, or, if that is not feasible, the dissolution of FADA and sale of its assets. Existing asset management contracts (or guarantee for future contracts) would not be for sale.

Good morning, Mr. Chairman and members of the Committee. It is a pleasure to be here today for the first time representing the Resolution Trust Corporation ("RTC") to apprise you of our progress since the RTC came into existence on August 9, 1989.

Much has been accomplished in less than two months since the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was signed into law. However, much more remains to be done before the RTC has a full staff of employees and all its operating policies and procedures in place. We and the Congress anticipated that the task at hand would be difficult. It is every bit as difficult as we contemplated. We have a tremendous task ahead of us.

Today we will discuss the Committee's specific areas of interest as stated in your letter of invitation. These include the operating policies adopted to date by the RTC and the safeguards we are implementing to protect against conflicts of interest, political favoritism and bribery by employees and agents of the RTC. In addition, we will provide a general overview of where the RTC stands and where it is headed, particularly in implementing many of the goals and specific mandates of FIRREA.

First, however, we would like to thank Secretary Brady and the rest of the Oversight Board and staff for their hard work and cooperation in getting this undertaking underway. During the start-up period we have worked closely with the Oversight Board to institute the policy statements discussed by Secretary Brady. Although we have had a few differences of opinion with the Oversight Board, these have been resolved. We look forward to a fruitful and positive relationship with the Oversight Board and staff as we jointly work to complete the start-up process and begin the greater task that lies ahead.

As an introduction to the Resolution Trust Corporation, we would like to outline the RTC's organizational and staffing structure and what we foresee in these areas for the future.

RTC ORGANIZATION STRUCTURE AND STAFFING

Washington Office. Mr. David Cooke, my former Deputy at the Federal Deposit Insurance Corporation ("FDIC"), is the Executive Director of the RTC. The RTC's major organizational components are the Asset and Real Estate Management Division headed by Lamar C. Kelly, Jr. and the Resolutions and Operations Division headed by William H. Roelle. An Administrative Division and a Funding Operations Division will support the two main functions. (See Attachment A for the organizational structure of the RTC Washington office.)

Certain departments of the FDIC also provide significant support services to RTC. These include areas such as corporate communications, legislative affairs, legal services, accounting and personnel management, as well as other areas.

The RTC currently has a Washington staff of approximately 100 employees, many of whom are on temporary details from either the FDIC staff or the now defunct Federal Savings and Loan Insurance Corporation ("FSLIC"). We anticipate that the RTC's Washington Office ultimately will have approximately 250 employees.

Regional Offices. Four Regional Offices have been established and four former FDIC Regional Directors have been appointed as directors of those offices. The RTC's Regional Offices are located in Atlanta, Dallas, Denver and Kansas City. (See Attachment B for the geographic areas covered by each Region.) Each Regional Office will be relatively small, with anticipated staffing -- exclusive of accountants and attorneys -- of approximately 100 employees. (See Attachment C for the organizational chart of the Regional offices.)

Consolidated Field Sites. Consolidated sites will be established to manage the disposition of real estate and other assets owned by the RTC. These sites are where most of RTC's personnel will be located. The number of employees is difficult to determine with any degree of precision at this time. It will depend upon the volume and type of assets, as well as our ability to hire private contractors. The RTC expects to employ outside contractors wherever practical in executing its mandate under FIRREA. Even so, the consolidated field sites are likely to employ several thousand people altogether.

At this early stage we have designed structures for three broad size categories of sites. Smaller consolidated sites will handle up to $7.5 billion in assets. A medium-sized site will handle $7.5 to $15 billion in assets. Large sites, which we anticipate will be few in number, will handle over $15 billion in assets. (See Attachment D for the list of consolidated sites.)

Initially 730 employees were transferred from the FDIC to the RTC's consolidated field sites. These employees were either in the FDIC's Asset Liquidation Division or were serving as Managing Agents in Conservatorships. Currently the RTC has approximately 800 field employees, the majority of which are involved in resolution and conservatorship operations.

We anticipate the number of people to be employed by the RTC will be substantial. Wherever possible, staffing for RTC will be minimized and most of the people employed will be hired as temporary employees. Even with these constraints, however, the RTC easily could employ between 5,000 and 10,000 people by the end of 1990.

GENERAL OPERATING POLICIES

On the day FIRREA was signed into law, the RTC adopted FDIC policies as interim operating policies. (See Attachment E for the text of these policies.) This allowed the RTC to begin its important tasks immediately. The policies provide general guidance in the areas of resolution transactions and asset disposition and management. These policies will be followed unless they conflict with policies adopted by the Oversight Board or until superseded by more specific or permanent RTC policies.

The Oversight Board also has adopted some policies which have been supplied to the Committee and described by Secretary Brady. Those policies are being followed by the RTC.

ETHICS AND CONFLICTS OF INTEREST

The Committee specifically requested information on the procedures and safeguards the RTC has and will put in place to protect against unethical conduct and conflicts of interest by its members, officers, employees and contractors. This process for establishing and implementing these procedures is well under way. Final regulations will be in place by the statutorily mandated deadline.

Within 180 days, FIRREA requires the RTC to (1) prescribe regulations which would govern conflicts of interest, ethical responsibilities and post-employment restrictions applicable to members, officers and employees of the RTC that shall be no less stringent than those applicable to officers and employees of the FDIC and (2) prescribe regulations applicable to RTC independent contractors which would govern conflicts of interest, ethical responsibilities and the use of confidential information, consistent with the goals and purposes of titles 18 and 41 of the United States Code.

As an interim measure, the RTC Board acted at its August 9 organizational meeting -- the date of enactment of FIRREA -- to extend the FDIC's "standards of conduct" regulations to independent contractors of the RTC, to the extent those standards "reasonably apply" to the activities of independent contractors. The Board included the "reasonably apply" standard because the FDIC's regulations prohibit employees from owning bank stock and obtaining extensions of credit (other than through the use of a credit card) from assisted banks or from acquirers of failed banks headquartered within their respective regions of assignment. We do not believe it reasonable or necessary to restrict bank stock ownership or credit of an independent contractor who, for instance, provides no more than lawn care services to the RTC.

This first action of the Board regarding ethical conduct standards was merely instituting the "bare essentials." Any credit restrictions ultimately imposed on independent contractors will depend upon the nature and extent of services the contractor is performing for the RTC. We expect to prohibit contractors from obtaining extensions of credit only from persons or institutions with whom their duties may require them to negotiate. We would not allow a contractor to obtain a loan from an institution with which he or she is negotiating the sale of an asset.

The RTC Board took further action on September 26 by adopting an interim statement of principles of ethical conduct for independent contractors. (See Attachment F for a copy of the statement.) The statement was developed in coordination with a joint policy group on ethical standards established by the RTC Oversight Board. While the principles set forth in the statement are effective immediately, we invited public comment before developing the proposed regulations which we plan to publish in early November for a 60-day public comment period.

In general terms, the principles set forth in the interim statement are designed to preclude contractors with the RTC from:

- Performing services for the RTC which could affect their personal financial interests or the financial interests of their spouses, minor children, or persons or entities with whom they have business or financial ties;

- Profiting from both sides of a transaction by performing services for the RTC in connection with a particular matter and simultaneously representing themselves or other parties to or before the RTC in connection with that same matter or a substantially related matter;

- Using nonpublic information obtained while performing services for the RTC to engage in private financial transactions or to benefit members of their families or persons or entities with whom they have business or financial ties;

- Using RTC property or the assets of institutions with respect to which they are performing services for the RTC for their personal use, or allowing the use of such property or assets by members of their families or persons or entities with whom they have business or financial ties; and

- Having the quality and integrity of their services to the RTC clouded or impugned by their acceptance of gifts, favors, entertainment or other items of monetary value from persons or entities whose financial interests could be affected by the performance or nonperformance of their duties and responsibilities to the RTC under the terms of their contracts.

It is not our intention at this time to prohibit independent contractors who manage assets for the RTC in one part of the country from purchasing RTC assets in other parts of the country. We will require, however, that they establish and enforce screening mechanisms satisfactory to the RTC. These mechanisms must preclude the flow of nonpublic information (e.g., the formulas and procedures by which the RTC establishes reserve prices on assets) between independent contractor employees who are performing services for the RTC and those who are attempting to purchase assets from the RTC.

Contractors have the right to be adequately and reasonably compensated for any services they perform for the RTC. They should not be allowed, however, to profit from both sides of a transaction or otherwise conduct their activities in a manner that discredits or causes a loss of confidence in the Federal Government. Contractors who perform duties and responsibilities ordinarily performed by Federal employees should be expected to behave and to be held to similar standards of conduct as Federal employees. Since the RTC is charged with a public trust, it may expect that persons with whom it contracts for services will provide those services not only for adequate and reasonable compensation, but also for the public benefit.

The RTC needs the experience and expertise of independent contractors in performing its functions. Accordingly, it will be necessary to strike a delicate balance between the legitimate needs of the RTC for independent contractors and the interests of the RTC, the Congress, and the American public in protecting against unethical conduct and conflicts of interest. We hope to achieve that balance in the final regulations.

In summary, we are working in cooperation with the RTC Oversight Board's ethics and conflicts of interest joint policy group towards the publication in early November of proposed regulations. We foresee no obstacles to having final regulations in place by the February 5, 1990 statutory deadline.

BRIBERY

The FDIC traditionally has relied upon three tiers of action to guard against the possibility of any third party bribing an FDIC official. The same courses of action will be followed by the RTC.

The first tier is the threat of criminal prosecution and incarceration for any FDIC official who may solicit or accept an illegal bribe or gratuity. FDIC maintains a close relationship with law enforcement authorities to deal with such cases.

The second tier consists of internal FDIC controls, audits and investigations. The FDIC Office of Inspector General conducts a vigorous program of audit controls which are designed to detect the presence of any potential bribery. Also, periodic site visitations are conducted to ensure that financial and management controls are effectively in place. These programs supplement the standard operating procedure of checks, balances and review in each office.

The third tier depends on those suspecting bribery to come forward. If a debtor is approached for a bribe by an FDIC official or if an FDIC official is approached to accept a bribe, the unmasking of these acts will help establish a high level of public intolerance for such activity and public confidence that the offenders will be punished. The importance of this third tier should not be minimized since even the best systems to deter criminal activity are not fail safe.

POLITICAL FAVORITISM AND UNDUE POLITICAL INFLUENCE

FIRREA requires that measures be taken to avoid political favoritism and undue influence with respect to the activities of the RTC. Working with the Oversight Board, the RTC plans to develop specific written policies and procedures that will draw upon current FDIC policies which also now govern RTC activities. The written guidelines adopted specifically for the RTC will delineate internal operating procedures and methods for responding to both appropriate and inappropriate inquiries.

The FDIC traditionally has conducted its operations independent of undue political pressures. We have policies that guard against such pressures. The policies allow us to investigate and provide information with respect to an inquiry, concern or complaint of those in political office. They do not permit us to discuss the substance of pending decisions with respect to specific actions nor alter or change a decision, policy or procedure of the FDIC at the request of any outside party.

The "independent" culture of the FDIC will carry over to the RTC. That objective will be facilitated by placing FDIC career employees in key RTC positions. By hiring through competitive government procedures, hiring will be based on merit not political connections.

RTC OPERATIONS AND RESOLUTIONS

The RTC is responsible for: the management and operation of institutions in conservatorship; the resolution of closed thrift institutions; and the management of funds -- as those funds are provided by the RTC Oversight Board -- for resolutions, liquidity and the replacement of high-cost funds. Immediately following the enactment of FIRREA, the RTC began the process of resolving the substantial inventory of insolvent thrifts that had been placed in the conservatorship program.

Conservatorship Program. A major component of the President's plan was to place the worst institutions under government control and reduce operating losses. As of September 30, 1989, 283 thrifts had been placed in the conservatorship program. These institutions had gross combined total assets of $112 billion and combined total liabilities of $124 billion. Based on limited asset reviews, we estimate that the losses in these institutions total $35 billion, or about 31 percent of gross assets. (See Attachment G.)

Our reviews also show that the estimated loss rate, on average, has declined for the more recent additions to the conservatorship program. Those institutions placed in conservatorship prior to March 31, 1989 have estimated losses as a percent of gross assets of 36 percent as compared to 21 percent for those placed in the program after March 31, 1989.

High-Cost Funding. Savings and loans in the conservatorship program are highly illiquid and prior to FIRREA were forced to compete aggressively for funds in a rising interest rate environment. As a result, despite aggressive liquidity management by our conservators, rates on brokered deposits increased by as much as 150 basis points in some sections of the country.

The availability of low-cost funds has decreased significantly the upward pressure conservatorship S&Ls were putting on interest rates. As of September 30, with funding provided by the Oversight Board, the RTC has made secured loans to 151 conservatorships in the amount of $8.1 billion. The loans were made to replace high-cost sources of funding. These high-cost funds were primarily Federal Home Loan Bank advances, brokered deposits and secured borrowings. As a result of this action, the savings to the RTC, and ultimately to the taxpayers, is estimated to be $118 million on an annualized basis.

The availability of this funding program has allowed institutions in conservatorship to exit from the high-cost funds market. When the program started, 25 of these institutions were among the top 35 rate payers in the country for 90 day CDs. As of September 18, one was in the top ten and it is the only RTC institution in the top 35. This reduction in interest rate market pressure should enable other financial institutions to lower their rates.

Reports from the field indicate that this is a very successful program. The managing agents can set rates that allow them to be competitive with local healthy institutions and maintain their core deposits. Previously forced to be market leaders to obtain funds for day-to-day operations, they now can control their rate structures and borrowings without being in the broker markets, and they can rely on the RTC to provide liquidity when needed. This has greatly simplified their funding and allowed a return to rational pricing of deposits.

Moreover, these actions have produced a significant impact on the cost of funds for all institutions that must compete for money in the market. In particular, the cost of funds index used by FSLIC in the Southwest Plan resolutions has been reduced significantly.

Emergency Liquidity Advances. In addition to replacing high-cost funds, the RTC also serves as "lender of last resort" for S&Ls in conservatorship. As of September 30, the RTC has provided $0.5 billion in emergency liquidity to 41 conservatorships that were unable to meet their daily liquidity needs and continues to maintain a reserve of $0.9 billion for future emergencies.

Resolutions. As of September 30, the RTC had disbursed $1.8 billion to resolve 24 institutions. It is important to note that the $1.8 billion outlay is not the measure of ultimate cost to the RTC. The ultimate cost will be determined only after deducting collections that are realized through the liquidation of assets held by the RTC.

Twenty of the 24 resolutions to date have been handled as insured deposit transfers, whereby institutions pay a premium to act as the RTC's paying agent for insured deposits. The other four resolutions were handled as insured deposit payoffs.

In addition to these transactions, the RTC has allocated $8 billion toward the resolution of five large institutions. These five transactions will be structured as "clean" purchase-and-assumption transactions in that the acquirer will receive only good quality assets and cash from the RTC to offset the assumption of deposits and other liabilities.

Originally we had planned to consummate these transactions by the end of September. However, due to recent clarifications in requirements for bidder eligibility and entrance and exit fees, we felt that a short postponement would be fair in order to ensure that no interested and eligible acquirers were excluded from the bid process.

The bidders' meetings were completed yesterday. Bidder interest in these five transactions is strong. We are highly confident these transactions will be completed by next week.

We also briefly postponed five smaller insured deposit transfers due to the clarification of bidder eligibility requirements. These transactions will use up the balance of the funds for resolutions.

In summary, the $20 billion has been allocated as follows:

Resolutions	$10.1 billion
Emergency liquidity	$1.4 billion
Replacement of high-cost funding	$8.5 billion

Bidding Procedures. Transactions consummated by the RTC to date generally have been smaller institutions with deposits of less than $500 million. These transactions were standardized with bidders essentially bidding to become RTC's paying agent for insured deposits. The RTC solicited names of prospective bidders from the FDIC, Office of the Comptroller of the Currency ("OCC"), Federal Reserve Board ("FRB") and Office of Thrift Supervision ("OTS"). Generally, for these smaller transactions, only financial institutions were solicited as time frames were brief (generally 48 hours or less).

A press release dated September 27, 1989, outlined procedures to be followed by the RTC in order to qualify interested parties as acceptable bidders. As indicated in the release, "...potential bidders must be deemed acceptable by the primary federal regulator and holding company and state chartering authorities if applicable." However, a bidder could be disqualified by the RTC if it were unable to obtain an opinion from the FDIC that the transaction "results in no undue risk to the deposit insurance funds."

To implement the above procedures for the sale of the five large thrifts, the RTC requested names of acceptable bidders from the FDIC, OCC, FRB and OTS. As a result of the solicitation, a number of additional prospective bidders were contacted by overnight mail on September 28, 1989. (See Attachment H for copy of the mailing.)

PROJECTIONS

The 283 institutions in the conservatorship program represent only a portion of the likely RTC caseload. The OTS is in the process of completing a list of conservatorship-bound S&Ls. We expect the official list shortly but, in the interim, are projecting our workload based on available financial data. We estimate that OTS may turn over another 300 thrifts to the RTC. This would mean that, in total, the RTC may be required to handle nearly 600 failures during the next three years with combined assets exceeding $300 billion (book value). These failures are widely disbursed geographically, with Texas accounting for the heaviest concentration.

How these cases are resolved will determine the volume of assets the RTC must manage. We estimate that only 40 to 45 percent of the assets will be sold to the acquirers of the failed institutions. Thus, RTC may have to manage the sale of as much as $180 billion in assets. The quality and composition of these assets will determine the difficulty the RTC will have disposing of them. While liquid assets can be disposed of quickly and easily, distressed assets will require significant marketing efforts. Keeping in mind the

questionable quality of a failing institution's financial reports, we estimate that as much as $100 billion in difficult, non-liquid assets may flow to the RTC.

We currently estimate about $16 billion would be in real estate owned by thrifts (most of which is repossessed real estate). This figure is likely to be low if, as is often the case, real estate is the only source of repayment on non-performing or poor-quality loans.

The projections discussed above raise questions about the adequacy of the $50 billion in RTC funding. Possible RTC losses are difficult to project because they are dependent upon many factors such as the number of failed institutions and their size, future interest rates, economic conditions and demand for thrift assets, as well as institution-specific factors such as ability to manage loans effectively. It is possible that $50 billion will prove to be an insufficient amount to deal with potential failures, but it is really much too early to make a reliable new prediction of loss.

The Office of Thrift Supervision is in the best position to identify which institutions are likely to be turned over to the RTC and when. Even then, it is difficult to estimate likely losses until the RTC has actually gone into these institutions.

RTC FUNDING

Through the Treasury and the Resolution Funding Corporation, the RTC will be provided with $50 billion to eliminate the negative net worth in institutions that are currently insolvent or will become insolvent within the next three years. While $50 billion represents the current cost of "filling the hole," it does not represent the total cash or working capital needs of the RTC. As mentioned earlier, the RTC may have to acquire $100 billion in illiquid assets out of failing S&Ls before they can be sold. The book value of these assets will have to be paid by the RTC to acquirers of insolvent S&Ls. Only after these assets are sold will the RTC be able to replace a portion of those cash outlays.

In effect the RTC must buy, then collect, on these illiquid assets. This ties up the RTC's cash very quickly. For example, after the five transactions are concluded next week we will have spent about $10 billion -- 20 percent of the $50 billion -- resolving institutions that account for only a small portion of the S&Ls to be resolved. A sizable portion of this $10 billion will be recovered, however, through collections on the assets held by the RTC. The collection process tends to be slow. Forced sales, dumping or overly aggressive collection efforts will result in increased RTC losses as well as severe disruption in already distressed economies.

The RTC must establish a working capital program or funding entity to manage its working capital needs. This would ensure that the RTC has enough cash for S&L resolutions without triggering uneconomic asset disposition policies.

We want to make it clear that no working capital program will enable the RTC to "fill a hole" deeper than the original $50 billion. If the resolution process reveals that $50 billion is too low, additional funds will be required to make up the difference. Working capital would simply allow the RTC to quickly remove the unhealthy portion of the thrift industry and allow time for the orderly disposition of assets.

We have had considerable discussion with officials from Treasury, government agencies that issue securities and investment banking firms about various working capital alternatives. Any programs to raise working capital, of course, would be limited by the debt limit imposed by FIRREA and by the value of the underlying assets.

No final decisions have been made and we plan to confer with Congress before initiating any major working capital programs. No matter which approach we take, funding for RTC will be very complicated. Our first step is to hire personnel for RTC's funding operations. We expect to complete our search efforts for an experienced Funding Director soon.

ASSET MANAGEMENT AND DISPOSITION

The long-term challenge facing the RTC will be properly managing the billions of dollars of assets that come from the resolution of failed thrifts and disposing of those assets in a timely and efficient manner. This task includes maximizing returns and assuring that low and moderate income individuals and non-profit organizations are afforded the opportunity to purchase eligible single- and multi-family housing. It also requires procedures that maximize the use of private and minority contractors.

Asset Disposition. A primary objective of the RTC is to maximize the net present value of collections on assets it controls while minimizing the impact of these transactions on local real estate markets. FIRREA identified six states as "distressed areas" which require adoption of special asset disposition policies to protect the economies of these areas. Other areas can be designated as "distressed" if warranted.

The legislation requires RTC to sell property in "distressed" areas at 95 percent of market value or above. Selling property below this threshold is permitted only to satisfy RTC low income housing objectives or if the RTC's Board of Directors approves lowering the threshold for appropriate reasons. We have no present plans to lower that threshold.

We understand the concern expressed through the legislation about the potential damage from "dumping" assets on a weakened market. The RTC is fully prepared to meet the requirements in the law to assure that market values are achieved for properties sold and that the adverse economic impact of real property sales is minimized. We do not "dump" property and never have.

The Oversight Board is formulating policies to govern RTC with respect to asset dispositions. Our policy, until a different policy is developed, is to institute an orderly disposition of assets at market values over time.

We do not believe that keeping property off the market -- if it can be sold at current appraised value -- would necessarily have the effect of maintaining higher values in the market place. In fact, holding properties off the market that can be sold at today's values can be a destabilizing factor. The cost of maintaining properties during a holding period must be balanced against ultimate realization values to protect the cost to the taxpayer.

In all geographic areas, including "distressed" areas, the RTC will employ systematic and orderly marketing strategies basing sale prices on current appraisals and other independent sources of market information. These sources will include brokers, market analysts and other Federal agencies. These strategies will avoid techniques such as "absolute" property auctions, which could be viewed as a mechanism to dispose of assets at any price. FDIC's uniform appraisal instructions are being revised to require consideration of sales with typical term financing offered as opposed to a strict cash sale basis.

Asset Disposition Decision Process. The asset disposition decision-making process utilized by the RTC is based upon Delegations of Authority approved by the RTC's Board of Directors.

Credit decisions can cover a wide array of areas, but most frequently consist of recommendations to sell real estate or other assets at specified prices, make advances to protect assets, or compromise and restructure loan agreements. Recommendations for a particular action are originated by the account officer or contractor managing the asset and presented in a written credit case format to the individual or committee authorized to approve the transaction.

The RTC will depend heavily upon the committee process to make credit decisions. Major decisions will be made by credit committees formed at the consolidated site and Regional level. Cases involving complex legal issues and large-dollar

assets generally will flow to RTC's Committee on Management and Disposition of Assets -- a senior level committee at RTC headquarters in Washington, D.C. To allow for an orderly workflow, various personnel with asset management expertise throughout the organization also will have lesser levels of individual delegated authority to approve routine transactions.

An additional component of the RTC's asset management process will include the preparation and approval of Asset Management and Disposition Plans outlining strategies for disposition of major assets acquired by the RTC. Adoption of Asset Management and Disposition Plans will help insure that asset negotiations and strategies employed by contractors and in-house employees are consistent with the objectives of FIRREA and RTC policy.

Real Property Asset Inventory. FIRREA requires the RTC to publish, semiannually, an inventory of real property assets of institutions subject to its jurisdiction. In particular, we are required to clearly delineate those real property assets that have "natural," "cultural," "recreational," or "scientific" values of special interest. The first such inventory must be published before January 1, 1990.

Because of the large number of assets in the conservatorships now under RTC control, meeting the year-end deadline is a real challenge. We are presently analyzing our needs based on the task at hand. We plan to contract out this function to the private sector in the near future.

Low Income Housing. One of the primary missions of the RTC under FIRREA is to maximize the preservation and availability of affordable housing for moderate- and lower-income families. To accomplish this objective the RTC will identify eligible single-family and multi-family residential units and provide non-profit organizations, public agencies and lower-income families a right of first refusal to purchase these properties.

For single-family dwellings, as eligible properties with clear title are identified, written property listings will be distributed to clearinghouses responsible for passing this information on to eligible purchasers. Qualified purchasers will have three months from the date of eligibility to make a bona fide offer to purchase the property.

Qualified purchasers of multi-family residential units have 90 days after the RTC notifies clearinghouses (or until the RTC determines the property is ready for sale, if earlier) to provide notice of serious interest in purchasing the property. Upon the RTC providing notice that the property is

ready for sale, any qualified purchaser who has expressed serious interest has 45 days to make a bona fide offer to purchase.

The RTC is in the process of setting up communication channels with the Department of Housing and Urban Development and other officials to develop strategies to identify and qualify purchasers for the program. We also are exploring the best methods for assisting in sales financing and the utilization of secondary market agencies to comply with the statutory requirement of the program.

To make certain that the lower income housing programs are properly carried out, the RTC has created key supervisory and staff positions in each of its field offices to manage program compliance. These managers will provide responsive execution and communication between the field offices and the Washington office, interact with the other agencies involved in the program and provide direct management of sales activities at the local level.

Private-Sector Contracting. FIRREA requires the RTC to utilize private-sector resources -- including asset management firms, property management firms, leasing companies, brokerage services, etc. -- whenever practicable. We have concluded that the use of private-sector resources, particularly in managing and disposing of complex real estate assets, is both practicable and efficient. Therefore, we have established a goal to maximize the use of private contractors.

Several steps have been taken or are in process to achieve the goals set forth above:

- We are in the process of developing contracting policies and procedures. Although not finalized, the process will include a thorough ethics/conflict-of-interest screening, a qualification determination, competitive bidding, negotiation, execution, and monitoring. The Washington office will handle national contracts while the regional offices will manage local contracts under delegated authority.

- Organizationally, we have established a senior executive position in the Washington office to establish contracting policies and procedures. Similarly, we have provided for contracting management specialists in both the regional offices and consolidated field sites.

- o During the past several weeks, we have met or communicated with hundreds of contractors to discuss the types of services the RTC will need and the policies and procedures under which contracting will be implemented.

- o We plan to develop a computer data base on all qualified contractors which can be used by RTC field personnel to quickly identify potential contractors by types of services performed and geographical location.

LITIGATION AND LEGAL SERVICES

As a result of the conservatorships and receiverships set up to date, the RTC has inherited approximately 35,000 matters in litigation.* The suits range from simple collection and foreclosure actions to large complex commercial litigation.

In order to hold down costs and avoid disruption in conservatorships, the RTC has utilized, to the greatest extent possible, the law firms retained by the thrifts prior to conservatorship, provided there is no conflict of interest with the RTC or the FDIC. Through the use of existing FDIC regional legal operations, we have begun monitoring all of these cases. The cases involving large dollar amounts (usually $250,000 or more), high fee amounts ($5,000 or more per month), or special issues, receive close supervision by our in-house legal staff. Other cases are monitored on a periodic basis by our Legal staff. All fee bills are reviewed and are subject to approval by our legal personnel.

We already have begun to realize cost savings. Our initial estimates indicate significantly reduced expenditures by these thrifts on legal fees. Hard estimates are not yet available, but it appears that these reductions may reach $50 million on an annualized basis for existing caseloads. Through improved monitoring, elimination of actions which are not cost effective, and agressive movement of cases toward judgment or settlement, it is anticipated that any poorly controlled handling of litigation in these institutions will be brought under control.

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* In fact, with the assimilation of RTC's caseload and FSLIC Resolution Fund matters, including the Southwest Plan cases, the FDIC will be involved in approximately 60,000 legal cases in addition to its caseload of approximately 13,000 that existed on the day FIRREA was enacted.

Eventually the FDIC's Legal Division will provide full in-house support to RTC in Washington and all the regional and field offices. The Legal Division will supply some 80 employees in Washington and approximately 1,100 employees in the field. Of these employees, approximately 500 will be attorneys. Recruiting has begun at all levels and we anticipate that by year-end some 200 attorneys will be in place along with appropriate support staff. As the field operations become fully staffed, the oversight of outside counsel will become better controlled and additional savings are anticipated.

Current estimates are that RTC expenditures for outside legal fees and expenses may reach $125 million for 1990. The actual expenditures, as well as the personnel estimates, will depend on the rate at which we can move forward with in-house staffing as well as the ultimate make-up of the caseload, the number of thrifts handled by RTC and the extent of the assets RTC has to liquidate.

The emphasis placed on outside contracting will apply to legal services as well. In-house attorneys will conduct litigation where practical and cost-effective. However, their primary role will be to direct and control outside counsel in order to provide the most effective and efficient blend of legal services.

ACCOUNTING AND AUDITING

The RTC is subject to oversight, auditing and accountability to an extent that probably is unprecedented in the history of government. In addition to the audit policy guidance provided by the Oversight Board, that Board also will be supported by an internal analytical group assessing operations. In addition, the RTC will have its own Inspector General reporting jointly to the Oversight Board and the RTC Board of Directors. Complementing the Inspector General will be the FDIC's own Inspector General that will audit and investigate as necessary the FDIC's provision of personnel and essential services to the RTC.

The General Accounting Office will audit the RTC annually either directly or through an accounting firm acting as its agent. In addition, the GAO presumably will perform periodic reviews and studies initiated by Members of Congress and/or their Committees.

Finally, we anticipate the Congress will exercise strenuous oversight of the RTC's operations -- as already evidenced by this hearing today and the creation of a special oversight task force of the House Banking Committee. In fact, FIRREA specifically mandates regularly scheduled appearances by the

RTC before this Committee. All in all, the readers and reviewers of audits will keep busy with the RTC.

MINORITIES AND WOMEN OUTREACH PROGRAM

FIRREA requires the RTC to establish an outreach program to ensure that minorities and women are afforded an opportunity to contract with the RTC on matters relating to asset management, property management, legal services, etc.

We are working to implement this program as soon as possible. A draft of RTC's program has been developed and is being reviewed at this time. We anticipate the program will include the following elements:

- Policy Statement - a commitment to comply with the spirit and intent of FIRREA's mandate
- Goals and Objectives - to provide and enhance opportunities for minority- and women-owned firms to contract with RTC
- Identification of qualified firms
- Certification - to ensure that the firms are indeed minority- or women-owned firms
- Qualification - to ensure that the minority- or women-owned firms have sufficient qualified staff and other resources to render the services
- Promotion - to communicate to minority- and women-owned firms RTC's commitment to contract with such firms
- Execution and Monitoring

REVIEW OF 1988 FSLIC AGREEMENTS

The RTC is required under FIRREA to estimate the cost to the Government of the 1988 FSLIC resolutions and, to the extent possible, find methods of reducing those costs. The review will cover 94 agreements involving $110 billion in assets. It will increase efficiency if the review is accomplished as promptly as possible. Our goal is to complete the review within one year.

We are recommending that most of the work be contracted out to private firms, which will coordinate closely with a small group of in-house staff. The use of private-sector analysts will help to ensure a credible and impartial review.

A preliminary look leads us to believe there may be ways of reducing costs. Some agreements provide guaranteed spreads and capital loss coverage on a large volume of problem assets. In many cases it may be feasible to prepay FSLIC notes or buy back or force the writedown of problem assets. This would reduce the Treasury's carrying cost and could improve collection incentives and performance. We hope to work with Treasury in exploring funding options that are consistent with the legislation.

LIQUIDATION OF FADA

FIRREA requires liquidation of the Federal Asset Disposition Association ("FADA") by the RTC within 180 days of enactment. Two alternative approaches are being considered: (1) The sale of the FADA organization or (2) the dissolution of FADA and the taking of its resources by the FDIC.

We will first attempt to sell the FADA organization. This approach would entail selling just the FADA structure. FADA's name, charter, capital stock and liquid assets would not be for sale. Furthermore, existing asset management contracts (or any guarantee for future contracts) would not be for sale. Any contingent liabilities resulting from FSLIC's indemnities with the FADA, its Board of Directors and its Officers would remain with the FSLIC Resolution Fund.

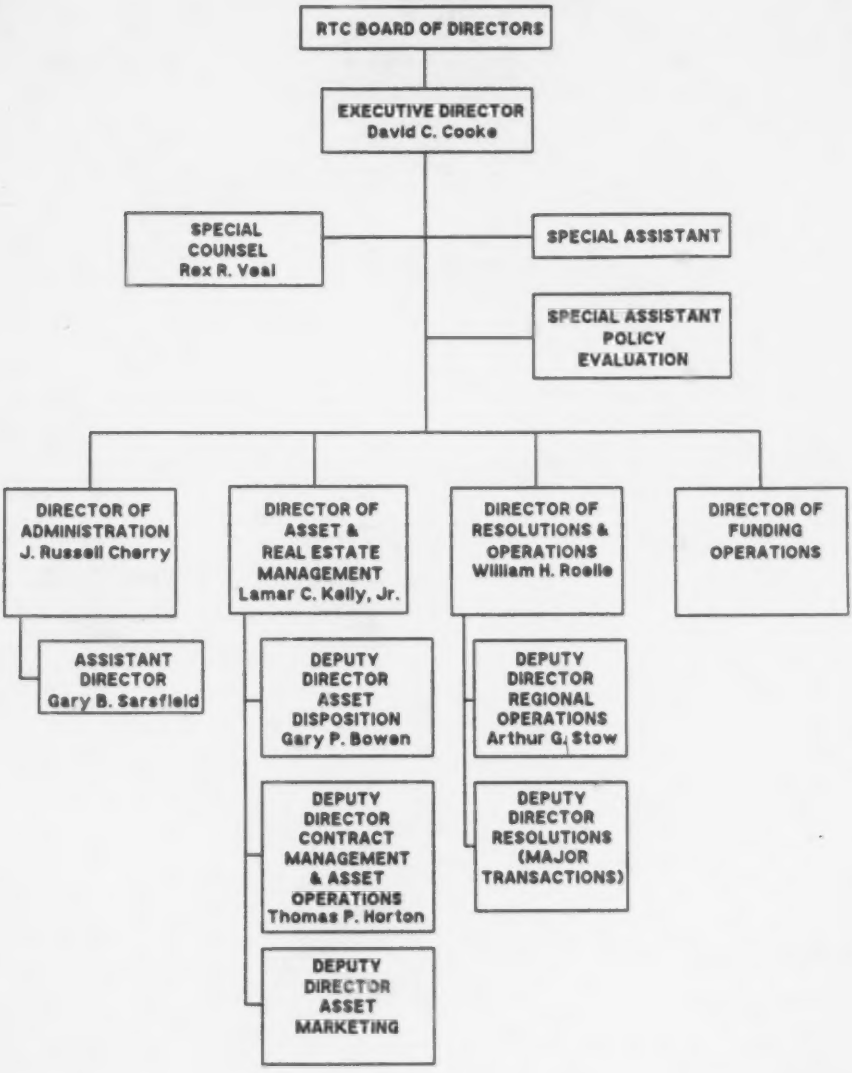
If we cannot sell FADA, the RTC will dissolve FADA and sell or use its assets. Asset-management duties would be transferred to the FDIC and FADA employees would be offered positions with the FDIC at government pay scales. The next step would be to sell, utilizing a competitive sale process, those of FADA's furniture, fixtures and similar assets that are not needed by the FSLIC resolution fund. This transition would occur during November and December and the asset sales would be during January.

CONCLUSION

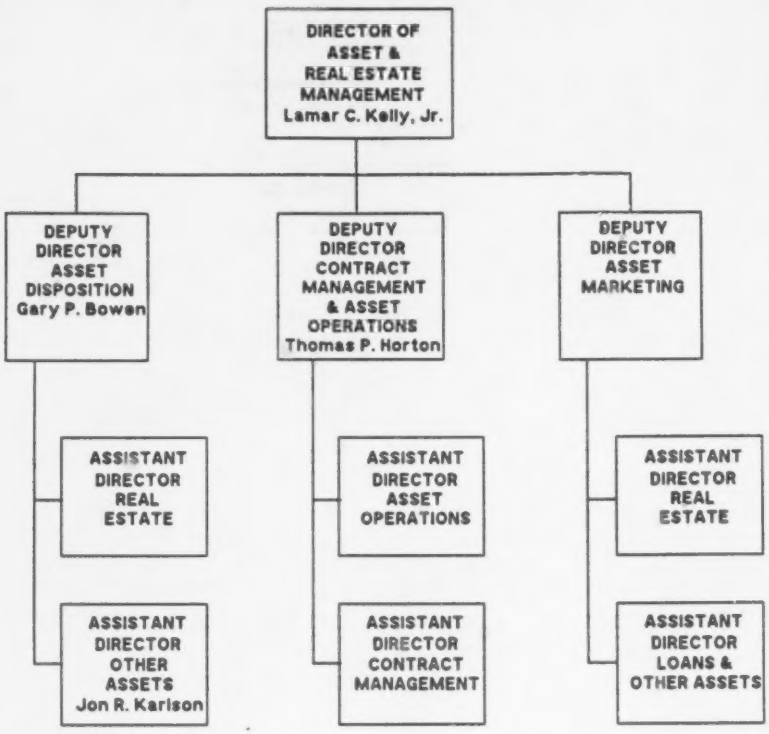
In conclusion, we believe we have made a good start. We are working under established FDIC policies while implementing, with the Oversight Board, new policies to guide our future work. We know that much remains to be done. The bulk of our work lies ahead.

Attachment A

RESOLUTION TRUST CORPORATION
WASHINGTON, D.C.



RESOLUTION TRUST CORPORATION
WASHINGTON, D.C.


DIRECTOR OF ASSET & REAL ESTATE MANAGEMENT Lamar C. Kelly, Jr.
DEPUTY DIRECTOR ASSET DISPOSITION Gary P. Bowen
DEPUTY DIRECTOR CONTRACT MANAGEMENT & ASSET OPERATIONS Thomas P. Horton
DEPUTY DIRECTOR ASSET MARKETING
ASSISTANT DIRECTOR REAL ESTATE
ASSISTANT DIRECTOR OTHER ASSETS Jon R. Karlson
ASSISTANT DIRECTOR ASSET OPERATIONS
ASSISTANT DIRECTOR CONTRACT MANAGEMENT
ASSISTANT DIRECTOR REAL ESTATE
ASSISTANT DIRECTOR LOANS & OTHER ASSETS

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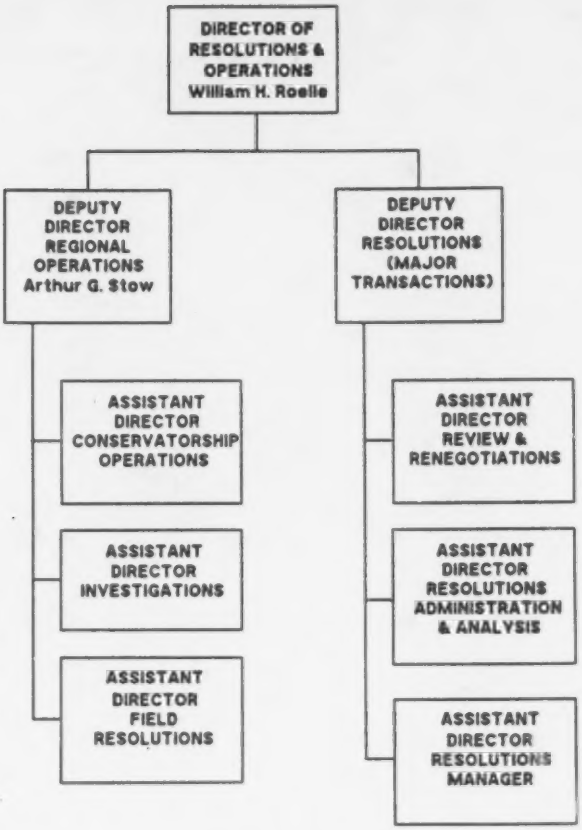
RESOLUTION TRUST CORPORATION
WASHINGTON, D.C.


DIRECTOR OF RESOLUTIONS & OPERATIONS
William H. Roelle
DEPUTY DIRECTOR REGIONAL OPERATIONS
Arthur G. Stow
DEPUTY DIRECTOR RESOLUTIONS (MAJOR TRANSACTIONS)
ASSISTANT DIRECTOR CONSERVATORSHIP OPERATIONS
ASSISTANT DIRECTOR INVESTIGATIONS
ASSISTANT DIRECTOR FIELD RESOLUTIONS
ASSISTANT DIRECTOR REVIEW & RENEGOTIATIONS
ASSISTANT DIRECTOR RESOLUTIONS ADMINISTRATION & ANALYSIS
ASSISTANT DIRECTOR RESOLUTIONS MANAGER

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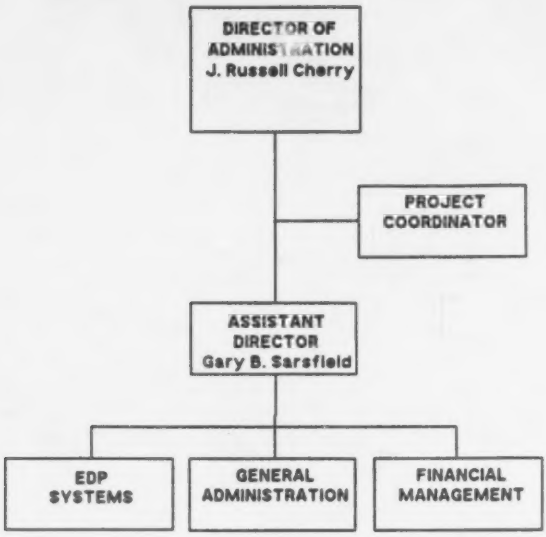
RESOLUTION TRUST CORPORATION
WASHINGTON, D.C.



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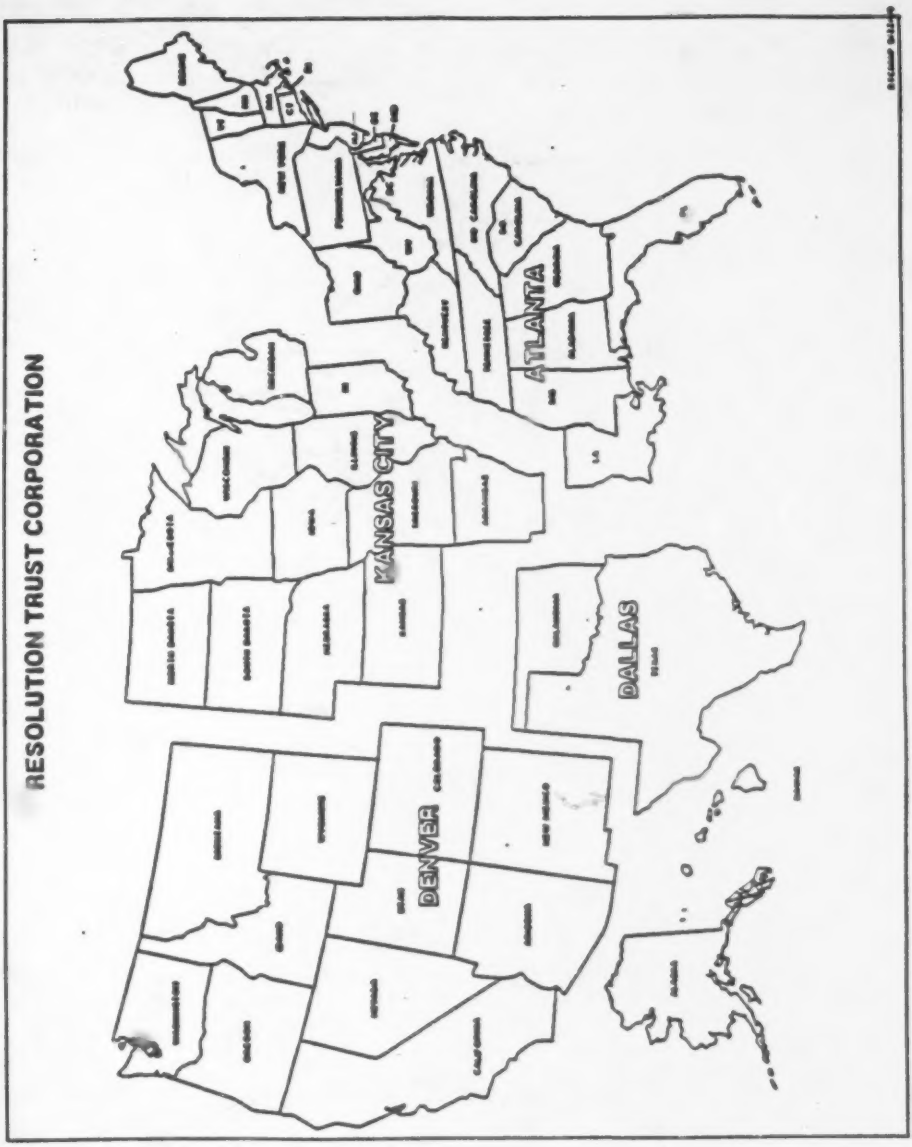
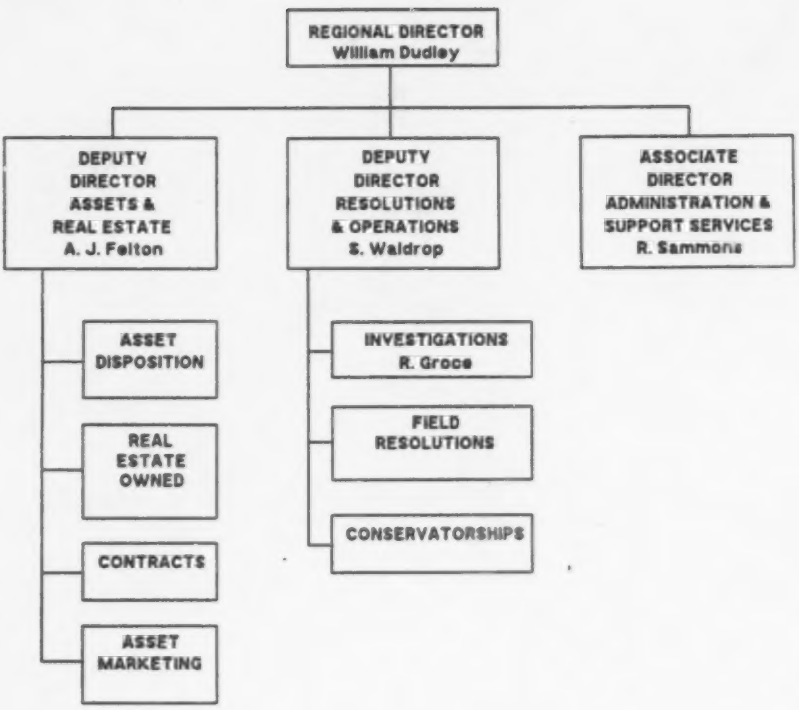
Attachment B



Attachment C

RESOLUTION TRUST CORPORATION

RESOLUTION TRUST CORPORATION
ATLANTA REGIONAL OFFICE



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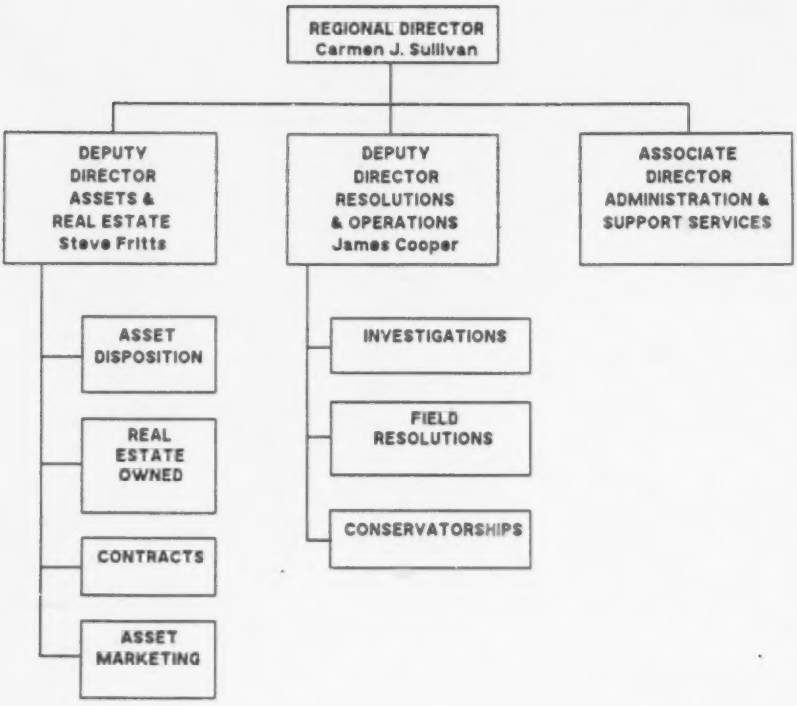
RESOLUTION TRUST CORPORATION
DALLAS REGIONAL OFFICE



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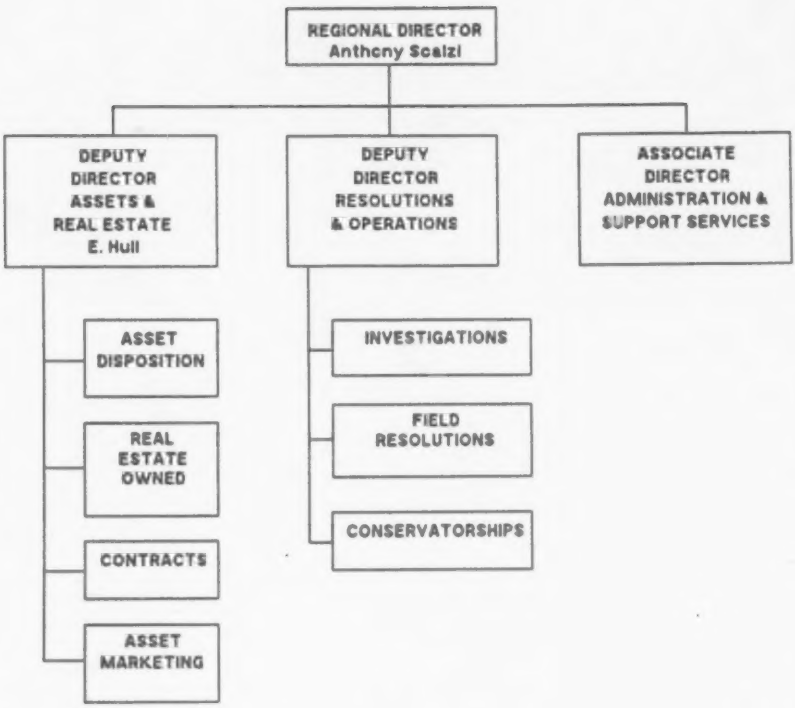
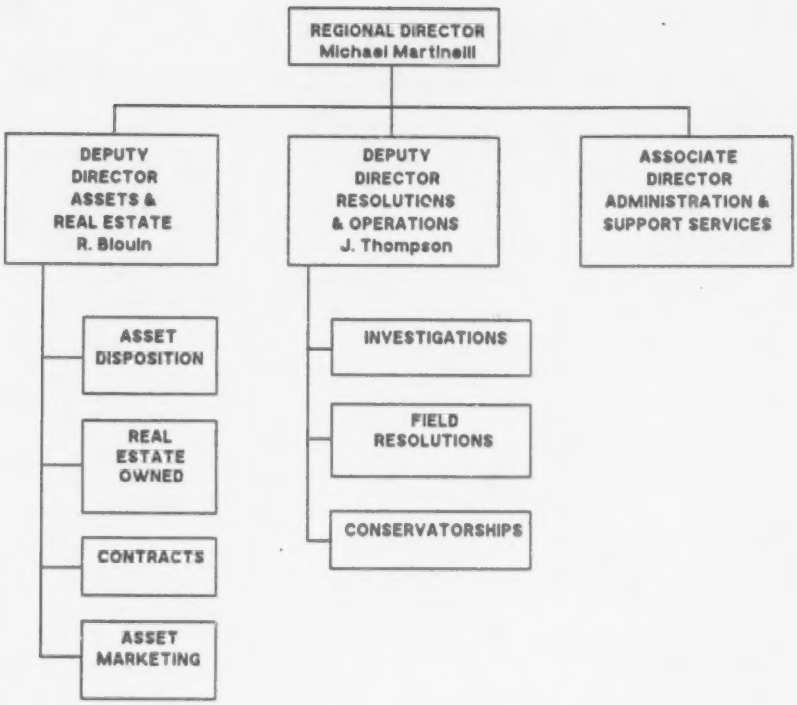
RESOLUTION TRUST CORPORATION
DENVER REGIONAL OFFICE



RESOLUTION TRUST CORPORATION
KANSAS CITY REGIONAL OFFICE



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Attachment D

RTC Consolidated Sites

East Region

Bayou Consolidated Office - Baton Rouge, Louisiana
Northeast Consolidated Office - Philadelphia, Pennsylvania
Southeast Consolidated Office - Tampa, Florida
Mid-Atlantic Consolidated Office - Atlanta, Georgia

Central Region

Mid-Central Consolidated Office - Kansas City, Missouri
North Central Consolidated Office - Burnsville, Minnesota
Lake Central Consolidated Office - Schaumburg, Illinois

Southwest Region

Metroplex Consolidated Office - Dallas, Texas
Gulf Coast Consolidated Office - Houston, Texas
Southern Consolidated Office - San Antonio, Texas

West Region

Intermountain Consolidated Office - Denver, Colorado
Central Western Consolidated Office - Phoenix, Arizona
Coastal Consolidated Office - Costa Mesa, California

Attachment E

RESOLUTION

BE IT RESOLVED that the attached document represents the General Operating Policies hereby adopted by the Resolution Trust Corporation on an interim basis. These General Operating Policies summarize the major existing resolution policies of the Federal Deposit Insurance Corporation. The adoption of these General Operating Policies is consistent with the actions taken by the Oversight Board in its meeting today.

FDIC Resolution Policies

This document summarizes the major resolution policies of the Federal Deposit Insurance Corporation.

The FDIC's primary goal is to resolve insolvent institutions in a manner that minimizes the long-term cost to the government. FDIC will strive to ensure that restructured institutions are adequately capitalized and well managed and do not impose unacceptable risks on the deposit insurer.

Another major goal of the FDIC is to maximize the recovery on failed institutions' assets while utilizing the private sector as much as possible.

GENERAL OPERATING POLICIES

Treatment of Potential Acquirers

*Potential bidders and the general public will be kept fully informed regarding the ground rules of the resolution process and the structure and parameters of completed transactions.

*In most cases, insolvent institutions will be resolved subject to a competitive bidding process.

*Qualified bids by entities other than depository institutions will receive no more and no less favorable treatment than bids by bank or acquirers.

*Offers will be accepted that do not include the management of problem assets; acquirers will be regarded as one among many potential asset managers. The FDIC will retain the flexibility to dispose of assets separately.

*In general, transactions will not include yield maintenance arrangements that guarantee a built-in spread on selected assets.

Capitalization of Restructured Institutions

*Acquirers of restructured institutions will be expected to fully capitalize the institution at levels consistent with those required for national banks.

*Capitalization typically will not be required for problem assets retained by the FDIC and managed by the acquirer under appropriate incentive arrangements.

*Generally, the FDIC will avoid taking ownership interests in institutions resulting from assistance transactions.

Forbearances

*The FDIC will avoid granting any forbearances from federal laws or supervisory requirements; nor will it authorize any powers or rights denied to federally chartered institutions. The FDIC may use its powers to grant forbearances from state laws that interfere with the cost effective and efficient resolution of insolvent institutions.

TRANSACTIONS

Preference for Market-Determined Consolidations

*The FDIC generally does not pursue administratively imposed consolidations of geographically proximate institutions.

*Offering institutions in the same area for sale at the same time is a market-based approach to consolidations can be considered.

Solicitation of Bids

*Wherever appropriate, potential acquirers will bid for standardized "clean-institution" or "whole-institution" packages.

*In some cases, especially for larger or more complex institutions, a customized package will be designed and put out for bid.

*The FDIC will delegate the handling of many smaller institutions to regional offices.

Asset Reviews

*In appropriate cases, the FDIC will attempt to provide bidders with the results of asset reviews performed by a third party. The FDIC will retain the flexibility to pursue other approaches on a case-by-case basis.

Asset Puts

*Where acquirers retain assets of questionable quality, the FDIC will generally provide some form of asset protection, such as post-transaction markdowns or putbacks for a limited time-period. The FDIC will consider the possibility of providing short-term protection against market fluctuations on long-term, fixed-rate assets to facilitate portfolio restructuring.

Transaction Structure

*In each case, FDIC will evaluate the feasibility of successfully arranging a "whole-institution" solution where substantially all assets pass to the acquirer. Whole institution transactions will not be pursued where they appear impractical due to lack of market interest, would result in unreasonable delays in the resolution process, or where the volume of problem assets is unduly large relative to the acquirer's capital account or ability to manage.

Attachment

RESOLUTION TRUST CORPORATION

Interim Statement of

Principles of Ethical Conduct for Independent Contractors

to the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation (RTC).

ACTION: Adoption of interim statement and request for comments.

SUMMARY: The RTC hereby adopts an interim statement prescribing the minimum standards of ethical conduct to which it expects persons or entities with which it contracts for services to adhere and, since the minimum standards are likely to be incorporated into any final conflict-of-interest rules and regulations applicable to independent contractors which the RTC promulgates, invites comments on the appropriateness of these standards to the activities of independent contractors.

DATE: The standards set forth in the interim statement are effective immediately. Comments on the standards should be submitted no later than October 31, 1989.

ADDRESS: All comments should be submitted to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 - 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. (Fax number: (202) 347-2773 or 2775).

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, Federal Deposit Insurance Corporation, 550 - 17th Street, N.W., Washington, D.C. 20429, telephone (202) 898-7272.

SUPPLEMENTARY INFORMATION: The RTC was established by section 21A(b) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and its purposes are (1) to manage and resolve all cases involving depository institutions (a) the accounts of which were previously insured by the Federal Savings and Loan Insurance Corporation and (b) for which a conservator or receiver was or is appointed during the period beginning on January 1, 1989 and ending on August 9, 1992; and, in so doing, (2) to sell or otherwise dispose of such institutions or the assets of such institutions with due consideration to the objectives, among others, of maximizing the net present value return from the sale or other disposition of such institutions or assets, making efficient use of funds provided by the Federal Government (i.e., the American taxpayer) for the resolution of cases, and minimizing any loss to the Federal Government in the resolution of cases.

Section 21A(b)(11)(A)(ii) of the Federal Home Loan Bank Act directs the RTC, in carrying out its duties, to use the services of private persons (including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services) if such services are available in the private sector and the RTC determines use of such services is practicable and efficient.

Section 21A(p)(6) of the Federal Home Loan Bank Act prohibits the RTC from engaging independent contractors to perform services on its behalf, and contractors in turn may not retain subcontractors or assign any of their employees to perform services on behalf of the RTC, who--

(1) do not meet the minimum standards of competence, experience, integrity, and fitness to be established by the RTC Oversight Board; and

(2) have (A) been convicted of a felony; (B) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any Federal banking agency; (C) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or (D) caused a substantial loss to the Federal deposit insurance funds.

Other relevant provisions of the Federal Home Loan Bank Act require persons seeking contracts with the RTC--

-- to include in their offers, in addition to such other information as the RTC Oversight Board may prescribe by regulation, a list and description of any instance during the preceding five years in which the person or company under such person's control defaulted on a material obligation to any insured depository institution; and

-- to agree that no person will be employed, directly or indirectly, under any contract with the RTC unless a list and description of any instance during the preceding five years in which the person defaulted on a material obligation to any insured depository institution, and such other information as the RTC Oversight Board may prescribe by regulation, is submitted to the RTC and the RTC does not disapprove of the direct or indirect employment of such person.

Further, section 21A(p)(3) of the Federal Home Loan Bank Act requires the RTC, not later than 180 days from the date of enactment of that section, to promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code.

Recognizing that the important work of the RTC must commence immediately and that the prior notice, public participation, and delayed effective date provisions of the Administrative Procedure Act will delay the promulgation of final rules and regulations for several months, the Board of Directors (the "Board") of the RTC considers it imperative that individuals or entities with whom the RTC contracts for services understand immediately and acknowledge that the Board will not tolerate or condone behavior or actions on their part or on the part of their employees assigned to perform functions on behalf of the RTC (hereinafter collectively referred to as "RTC contractors") which evidence self-dealing or political or other favoritism. Further, the Board expects RTC contractors to perform their duties and responsibilities to the RTC with the highest degree of honesty and integrity, so as to maintain public confidence in the RTC. Actions on the part of RTC contractors which result in or create the appearance of a conflict of interest or which suggest political or other favoritism may result in the termination of contracts. In any case where any such action indicates a possible violation of Federal criminal conflict-of-interest or other applicable criminal statutes, such as making false or fraudulent statements in a Government matter, the matter will be referred immediately to the Department of Justice for investigation and prosecution.

Pending the promulgation of final rules and regulations implementing the provisions of section 21A(p)(3) of the Federal Home Loan Bank Act, RTC contractors are expected by the Board to conduct their activities in an exemplary manner and to adhere, at a minimum, to the following:

INTERIM STATEMENT OF PRINCIPLES OF ETHICAL CONDUCT FOR INDEPENDENT CONTRACTORS TO THE RESOLUTION TRUST CORPORATION

1. RTC contractors will NOT hold financial interests that conflict with the conscientious performance of duty. Before being engaged by the RTC, contractors will be required, under appropriate circumstances, to make disclosures relative to their employment and financial interests and those of their spouses, their minor children, and others with whom they may have business or financial ties. The information required to be disclosed in any given case shall be limited to that which is reasonably necessary to allow the RTC to determine that no conflicts or potential conflicts of interest exist with respect to the services proposed to be performed for the RTC and shall also include certifications to the effect that the contractor meets minimum standards of competence, experience, integrity, and fitness and is not otherwise ineligible to be engaged by the RTC.

2. RTC contractors will NOT participate in any matter in which they, their spouses, their minor children, persons or organizations with whom they have business or financial ties, or persons or organizations with whom they are negotiating or have an arrangement for future employment have a financial interest, unless the Contractor Conflicts Committee, to be formed for the purpose of reviewing such conflicts-of-interest issues, determines that the relationship or financial interest is not so significant as to warrant disqualification from participation in the matter.

3. RTC contractors will protect and conserve RTC property and will not use it or allow its use for other than authorized activities. They will not, for example, use or allow the use of property or assets of a savings association in conservatorship or receivership or of property otherwise held by the RTC (e.g., automobiles, furniture and equipment, or objets d'art) for their personal use or for the use of other firm members, family members, personal friends, or persons with whom they have business or financial ties.

4. RTC contractors will NOT directly or indirectly acquire or assist another person or organization in acquiring an interest in any institution or the assets or property of any institution in conservatorship or receivership with respect to which they are rendering or have rendered services to the RTC.

5. RTC contractors will NOT allow the unauthorized use of non-public information obtained as a result of rendering services to the RTC and shall take all reasonable measures to avoid unintentional or inadvertent disclosure of such information both within and outside the contracting organization. All information obtained by a contractor as a result of rendering services to the RTC will be treated as non-public information unless its disclosure is specifically authorized in writing by the RTC or unless it becomes part of the body of public information from a source other than the contractor.

6. RTC contractors will NOT engage in financial transactions using non-public information from RTC or allow the improper use of such information to further any private interest.

7. During the term of their engagement, RTC contractors will NOT offer to any RTC employee any gifts or other items of monetary value (e.g., food, refreshments, and entertainment; "green" fees; boating excursions; and tickets to theatrical, sporting, social, or charitable events).

8. During the term of their engagement, RTC contractors will NOT solicit or accept for themselves or for others gifts or other items of monetary value from any person or entity who, to the knowledge of each contractor, is seeking official action from the RTC in connection with the contract under which services are being rendered to the RTC or has interests which may be substantially affected by the performance or nonperformance of the contractors' duties to the RTC. They will not, for example, solicit or accept gifts or other items of monetary value from--

(a) directors, trustees, officers, or employees of, or suppliers of goods and services to, any savings association in conservatorship or receivership with respect to which they are rendering services to the RTC;

(b) debtors to or creditors of any savings association in conservatorship or receivership with respect to which they are rendering services to the RTC;

(c) potential acquirers of failing or failed savings associations or of the assets of such associations with respect to which they are rendering services to the RTC;

(d) persons or entities, and their representatives, in litigation with the RTC in connection with matters with respect to which they are rendering services to the RTC;

(e) contractors or subcontractors to, or persons or entities seeking contracts with, the RTC.

9. RTC contractors will make no unauthorized commitments or promises of any kind purporting to bind the RTC.

10. RTC contractors will act impartially and not give preferential treatment to any private organization or individual in the performance of their duties and responsibilities under their terms of their contracts.

11. Firms or individuals with an interest in obtaining an RTC contract or who are negotiating the terms of an RTC contract will NOT make an offer of employment to any RTC employee who is personally and substantially involved in the negotiation of the contract.

12. RTC contractors will endeavor to avoid any actions which could create the appearance that they are violating the ethical principles and standards stated herein or any laws related thereto and will agree to monitor compliance with such standards and laws by any subcontractors they retain or any of their employees they assign to perform services on behalf of the RTC.

13. RTC contractors will NOT subcontract with anyone who would not otherwise be eligible to contract with the RTC directly.

14. RTC contractors will certify that they are in compliance with these principles.

Other Considerations for RTC Contractors

Persons or entities seeking contractual relationships with the RTC are reminded that, pursuant to section 21A(p)(1)(B) of the Federal Home Loan Bank Act, ". . : [a]ny individual who, pursuant to a contract or any other agreement, acts for or on behalf of the [RTC] shall be deemed to be a public official for the purposes of section 201 of title 18, United States Code." That statute imposes criminal sanctions against public officials (and, consequently, against contractors to the RTC) who accept bribes in connection with the performance of their official duties.

Attachment G

RTC CONTROLLED S&L'S
ASSET & LOSS PROFILE
AS OF SEPTEMBER 25, 1989
(IN MILLIONS)

STATE	NO. S&L'S	*ORIGINAL GROSS ASSETS	**CURRENT GROSS ASSETS	$ CHANGE GROSS ASSETS	% CHANGE GROSS ASSETS	CURRENT TOTAL LOSS	CURRENT TOTAL LOSS/ GROSS ASSETS
ALABAMA	5	1,520	1,255	(265)	-17.42%	229	18.28%
ARIZONA	5	10,504	10,200	(303)	-2.89%	2,552	25.02%
ARKANSAS	12	3,807	3,335	(472)	-12.40%	1,625	48.71%
CALIFORNIA	22	22,216	19,081	(3,135)	-14.11%	2,822	14.79%
COLORADO	12	2,610	2,432	(178)	-6.83%	856	35.20%
FLORIDA	14	5,379	4,922	(457)	-8.50%	1,277	25.94%
GEORGIA	6	1,495	1,381	(114)	-7.61%	242	17.51%
ILLINOIS	19	3,112	2,854	(258)	-8.29%	547	19.17%
KANSAS	14	4,348	4,184	(164)	-3.77%	1,328	31.74%
LOUISANA	28	3,159	3,095	(64)	-2.04%	1,350	43.62%
MISSISSIPPI	6	1,070	1,048	(22)	-2.06%	246	23.50%
MISSOURI	6	2,272	2,097	(175)	-7.72%	540	25.77%
NEBRASKA	5	1,503	1,418	(86)	-5.69%	380	26.77%
NEW MEXICO	5	1,676	1,601	(75)	-4.48%	975	60.93%
TENNESSEE	5	517	486	(31)	-5.97%	103	21.12%
TEXAS	83	35,794	32,186	(3,608)	-10.08%	16,345	50.78%
OTHER STATES	36	21,196	20,099	(1,098)	-5.18%	3,079	15.32%
TOTALS	283	122,179	111,673	(10,506)	-8.60%	34,496	30.89%
CONSERVATORSHIP							
2-01-89 TO 3-31-89	177	83,352	74,930	(8,422)	-10.10%	26,738	35.68%
4-01-89 TO 6-30-89	57	26,794	24,775	(2,019)	-7.53%	5,317	21.46%
AFTER 6-30-89	49	12,032	11,968	(65)	-0.54%	2,440	20.39%
TOTALS	283	122,179	111,673	(10,506)	-8.60%	34,496	30.89%
RTC REGIONS							
EASTERN	79	22,630	21,075	(1,555)	-6.87%	4,316	20.48%
CENTRAL	67	21,086	19,502	(1,584)	-7.51%	5,921	30.36%
SOUTHWEST	87	36,656	33,026	(3,629)	-9.90%	16,584	50.22%
WESTERN	50	41,807	38,069	(3,738)	-8.94%	7,674	20.16%
TOTALS	283	122,179	111,673	(10,506)	-8.60%	34,496	30.89%
ASSET SIZE							
<= 500 MILLION	232	28,963	26,951	(2,012)	-6.95%	11,318	42.00%
> 500 MILLION	51	93,216	84,722	(8,494)	-9.11%	23,178	27.36%
TOTALS	283	122,179	111,673	(10,506)	-8.60%	34,496	30.89%

INCLUDES 263 ACTIVE AND 20 RESOLVED CASES

* ORIGINAL GROSS ASSETS BASED ON MONTH IMMEDIATELY PRIOR TO CONSERVATORSHIP

** CURRENT GROSS ASSETS BASED ON MOST RECENT FINANCIAL REPORTS AVAILABLE

Attachment H

September 28, 1989

Dear Prospective Bidder:

During the week of September 10, 1989, the RTC notified you [certain parties] that it was beginning the resolution process for ten large savings associations. Included among the group of early resolutions were the following five savings associations:

- Freedom Savings and Loan Association, Tampa, Florida
- Hill Financial Savings Association, Red Hill, Pennsylvania
- Pacific Savings Bank, Costa Mesa, California
- Peoples Heritage Savings, A Federal Savings and Loan Association, Salina, Kansas
- University Federal Savings Association, Houston, Texas

The RTC's expedited case resolution process for these five institutions included the goal of consummation of transactions for as many of the five as possible over the September 30 weekend. The RTC Board of Directors on September 27, adopted capital requirements for newly formed state chartered nonmember banks and thrifts created as a result of RTC transactions, postponed the acceptance of bids due that day and reopened marketing to qualified bidders on the above five savings associations.

In addition to reopening marketing, the RTC Board of Directors directed its staff to notify all prospective bidders of the new policies as outlined in the enclosed press release. As indicated, the capital requirements for each financial institution interested in bidding on RTC's savings institutions are the domain of the primary Federal and State regulatory authorities. Each prospective bidder should discuss its capital plans with its respective primary Federal and State regulator and the FDIC if the transactions contemplate newly chartered thrifts or state nonmember banks requiring deposit insurance.

550 17th Street, NW ■ Washington, DC 20429

If you or your institution wish to pursue an assisted acquisition of any of the five institutions named herein, complete one copy of the enclosed Confidentiality Agreement for each institution you wish to pursue. Unless previously sent, please return it/them to the "Express Mail" address or by using the facsimile (FAX) numbers given below. If faxed, Confidentiality Agreements with original signatures should be mailed subsequently to the regular mail address, also below. In any case, we ask your assistance by completing the enclosed "Investor Interest Form" and returning it by FAX to the RTC.

On Tuesday, October 3, the RTC will meet with all prospective bidders who have returned completed Confidentiality Agreements in the past, or as a result of this communication. The meeting is scheduled to begin at 11:00 AM and will be held in the Amphitheater (Basement Level) of the RTC Building located at 801 17th Street, NW. Packages containing information about the institutions and draft assistance agreements will be provided to all parties returning Confidentiality Agreements whom are deemed pre-qualified. In the case of individuals, investor groups, non-depository institutions or corporations RTC will make a preliminary judgement on qualifications subject to subsequent concurrence by the chartering and insurance authorities.

If you have any questions, please contact J. Richard Earle at (202) 416-4316.

Sincerely,

Sherwin R. Koopmans
Deputy Director, Resolutions

Enclosures

"Express Mail or Courier"
Resolution Trust Corporation
Attention: RTC Marketing List
J. Richard Earle
801 17th Street, NW (4th Floor)
Washington, D.C. 20006

"Regular Mail"
Resolution Trust Corporation
Attention: RTC Marketing List
J. Richard Earle
550 17th Street, NW
Washington, D.C. 20429

FAX Numbers: 202-898-1850
202-898-1851
202-898-1852

INVESTOR INTEREST FORM

Name of Bidder:_____

Contact Person:_____

Telephone Number:_____

We are interested/remain interested in pursuing an assisted acquisition of (please check all that apply):

_____ Freedom Savings and Loan Association
_____ Hill Financial Savings Association
_____ Pacific Savings Bank
_____ Peoples Heritage Savings, A Federal Savings and Loan Association
_____ University Federal Savings Association

We wish to perform due diligence/additional due diligence at:

_____ Freedom Savings and Loan Association
_____ Hill Financial Savings Association
_____ Pacific Savings Bank
_____ Peoples Heritage Savings, A Federal Savings and Loan Association
_____ University Federal Savings Association

We are not interested in any of the five institutions (please check _____)

Please return by FAX by October 2 to 202-898-1850, 202-898-1851, or 202-898-1852.

CONFIDENTIALITY AGREEMENT

Agreement of Potential Acquiror

The undersigned hereby acknowledges that it desires to receive an information package and may conduct due diligence review of _____, (Name of Insured Institution)

_____, _____
(City) (State)

(the "Insured Institution"), in order to evaluate a possible acquisition of the Insured Institution by the undersigned in its own right and not as an agent, representative or broker for or on behalf of an undisclosed party or parties.

Upon receipt of any financial or operational information regarding the above referenced institution, the undersigned hereby acknowledges and agrees to be bound by the restrictions set forth herein:

1. On-Premises Review and Reproduction of Documents.

All documents and other items made available to the undersigned by the Insured Institution, the Resolution Trust Corporation ("RTC") as conservator of the Insured Institution or the Federal Deposit Insurance Corporation (the "FDIC") as managing agent for the conservator, other than those in the information package, may only be reviewed by the undersigned on the Insured Institution's premises. No reproductions of such documents, other than handwritten summaries or notes and self-generated computer

records, may be made by the undersigned.

2. Information Package

The RTC or FDIC may provide an information package containing operational or financial information about the insured institution. The undersigned agrees that such information package is the property of RTC and is not to be used for any purpose other than to assist the undersigned in the proposal process. The information package may be disseminated to employees, organizations, and other persons associated with the undersigned engaged to assist the undersigned in the proposal process. However, prior to dissemination the undersigned agrees and affirmatively covenants to make the provisions of this agreement known to any person, organization and employee and to obtain from such the commitment to maintain the confidentiality of the information package in accordance with the terms of this agreement.

3. Briefing and Disclosure Requirement.

At any time after 30 days have passed since the completion of any review and on request of the FDIC or RTC, the undersigned will make available to FDIC or RTC at a reasonable time and in a reasonable manner the persons who conducted any review for the purpose of briefing FDIC or RTC, which briefing may include

discussion and disclosure of any data, charts, graphs, summaries, memoranda or conclusions drawn from or based upon the documents made available to the undersigned (any information of any kind provided by the undersigned, whether orally or in writing, is herein called the "Undersigned's Information"). Such briefing will be used by FDIC or RTC for internal informational purposes only. The undersigned shall not in any event be required to disclose or make available opinions, privileged communications, or information relating to the internal bidding policies, guidelines or decisions of the undersigned.

4. Destruction of Documents and Information.

The undersigned further hereby acknowledges and agrees that all the documents and information provided to the undersigned including the information package, all memoranda, notes, computer records and other writings prepared by the undersigned based on the information in these documents and copies made of any of the foregoing will be destroyed by the undersigned if it is determined that no proposal is to be made by the undersigned, or if any proposal submitted by the undersigned is not accepted with respect to the Insured Institution. On request of the FDIC or RTC, such destruction shall be certified in writing to the FDIC or RTC by an authorized officer of the undersigned.

5. Restriction on Use of Documents and Information/Exceptions.

The undersigned also hereby acknowledges and agrees that the documents and information referred to herein made available and any other material related to this potential acquisition provided by the Insured Institution, RTC or the FDIC to the undersigned, are to be used in its decision to make a bid and for no other purposes, that the information contained therein will be kept confidential and disclosed only to the partners, directors, officers, agents, advisors and employees of the undersigned who are working on, or consulted in connection with, the proposed acquisition, that all such persons to whom such information is disclosed shall be advised of the restrictions contained herein, and that it shall undertake all necessary steps to ensure that these restrictions are followed. Such restrictions shall not apply to information which (i) is already in the undersigned's possession, provided that such information is not known by the undersigned to be subject to another confidentiality agreement with or other obligation of secrecy to the FDIC, RTC or another party, or (ii) is or becomes generally available to the public other than as a result of a disclosure by the undersigned or its partners, directors, officers, employees, shareholders, co-investors, agents, representatives or advisors, or (iii) becomes available to the undersigned on a non-confidential basis from a source other than the FDIC or RTC, provided that such source is not known by the undersigned to be bound by a confidentiality agreement with or other obligation of secrecy to the FDIC, RTC or

another party. If, in the opinion of the undersigned's counsel, any disclosure otherwise prohibited by this paragraph is required by law or court order, the undersigned shall, prior to any such disclosure, advise and consult with the FDIC and RTC and their counsel concerning the reasons for, and nature of, the proposed disclosures.

6. No Warranties or Representations.

The undersigned hereby acknowledges and agrees that the FDIC and RTC make no representations or warranties, express, implied or otherwise, as to the accuracy or completeness of any documents made available to the undersigned whether such documents have been prepared by the FDIC, RTC or the Insured Institution or any other party.

The undersigned further hereby acknowledges and agrees that it shall not rely nor allow or advise any other party to rely through the undersigned, upon the work product, memoranda, statements, opinions, representations, factual or historical summaries or disclosures of any kind of any employee, accountant, officer, attorney, agent, representative or advisor, made known to it by the FDIC or RTC, whether through discussions with any such person or through review of any FDIC, RTC or Insured Institution's files, pleadings or documents, whether supplied by the FDIC, RTC or another party.

7. Disclosure of Affiliations.

The undersigned agrees that should it submit a proposal to acquire the Insured Institution, the undersigned will disclose all affiliations which the undersigned, an affiliate, subsidiary, employee or agent of the undersigned has, or in the past five years had, with the Insured Institution. For the purposes of this paragraph, affiliation shall include, but not necessarily be limited to situations where the undersigned:

a) Holds or held an equity interest in the Insured Institution;

b) Has or had an indebtedness, line of credit or loan commitment, including letters of credit;

c) Is or was employed or acted as agent, broker or advisor to the Insured Institution or any other similar arrangement.

The undersigned agrees to submit such information, in writing, as part of its proposal to acquire the Insured Institution.

Date: _____

_____

Signature

_____

Name

_____

Title

_____

Organization

_____

Phone Number

_____

FAX Number

Joint News Release

Federal Deposit Insurance Corporation
Resolution Trust Corporation

FOR IMMEDIATE RELEASE

PR-188-89 (9-27-89)

CAPITAL REQUIREMENTS ADOPTED FOR FAILED THRIFT RESOLUTIONS

The Boards of Directors of the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC) today adopted a policy defining the procedures that will be used to qualify financial institutions interested in bidding on RTC's savings institutions. In addition, the FDIC adopted capital requirements for newly-formed state-chartered nonmember banks and thrifts created as a result of RTC transactions.

At the same time, the RTC announced that today's deadline for submission of bids on five institutions has been delayed to permit all parties interested in bidding to evaluate this newly adopted policy. The RTC plans to meet with interested bidders on October 3.

The policy follows:

In order to qualify as an acceptable bidder for a failed thrift institution, potential bidders must be deemed acceptable by the primary federal regulator, and holding company and state chartering authorities if applicable. In addition, the RTC will obtain the opinion of the FDIC that the ultimate transaction results in no undue risk to the deposit insurance funds.

The FDIC will require a 4-1/2% tangible capital-to-assets ratio for new applications for deposit insurance by state-chartered nonmember banks and thrifts resulting from RTC transactions. Capital in these cases would be defined by risk-based guidelines. It would include at least 3% Tier 1 capital and no more than 1-1/2% from Tier 2. Loan loss reserves would be excluded.

In adopting this policy, the FDIC Board emphasized that the policy is designed to expedite the thrift resolution process and does not affect long-term capital standards. Directors Robert L. Clarke and M. Danny Wall specifically indicated that their votes approving the policy were intended to permit the RTC to go forward with case resolutions but did not indicate endorsement of the specific ratio set forth in the policy for institutions under their supervision.

(The five savings institutions for which the RTC has delayed the deadline of submission of bids are: Freedom Savings & Loan Association, Tampa, Florida; Hill Financial Savings Association, Red Hill, Pennsylvania; Pacific Savings Bank, Costa Mesa, California; Peoples Heritage Savings, A Federal Savings & Loan Association, Salina, Kansas; and University Federal Savings Association, Houston, Texas.)

significant economic impact on a substantial number of small business entities, in this case small state nonmember banks, in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) While all insured banks will presumably be required to make some revisions to their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the FDIC, in conjunction with the other Federal banking agencies, intends to adopt, after an opportunity for public comment, reporting procedures designed to minimize the burden on small institutions.

The risk-based capital framework set forth in this statement of policy is designed primarily to take accout of those practices, such as the increased use of off-balance sheet activities and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banks to raise additional capital, the statement of policy is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, State nonmember banks.

Accordingly, 12 CFR Part 325 is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1818(b), 1816, 1818(a), 1815(b), 1819(Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. A new Appendix A is added to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

Capital adequacy is one of the critical factors that the FDIC is required to analyze when taking action on various types of applications and when conducting supervisory activities related to the safety and soundness of individual banks and the banking system. In view of this, the FDIC's Board of Directors has adopted Part 325 of its regulations, which sets forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is in an unsafe or unsound condition by reason of the amount of its capital.

This capital maintenance regulation was designed to establish, in conjunction with other Federal bank regulatory agencies, uniform capital standards for all federally-regulated banking organizations, regardless of size. The uniform capital standards were based on ratios of capital to total assets. While those leverage ratios have served as a useful tool for assessing capital adequacy, the FDIC believes there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banks. As a result, the FDIC's Board of Directors has adopted this Statement of Policy on Risk-Based Capital to supplement the Part 325 regulation. This statement of policy does not replace or eliminate the existing Part 325 capital-to-total assets leverage ratios. Once the risk-based capital framework is implemented, the FDIC will consider whether the Part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended.

The framework set forth in this statement of policy consists of (1) a *definition of capital* for risk-based capital purposes, (2) a system for calculating *risk-weighted assets* by assigning assets and off-balance sheet items to broad risk categories, and (3) a schedule, which includes transitional arrangements during a phase-in period, for achieving a *minimum supervisory ratio* of capital to risk weighted assets. A bank's risk-based capital ratio is calculated by dividing its qualifying total capital base (the numerator of the ratio) by its risk-weighted assets (the denominator).[1] Table I outlines the definition of capital and provides a general explanation of how the risk-based capital ratio is calculated. Table II summarizes the risk weights and risk categories, and Table III sets forth the credit conversation factors for off-balance sheet items. Additional explanations of the capital definitions, the risk-weighted asset calculations, and the minimum risk-based capital ratio guidelines are provided in Sections I, II and III of this statement of policy.

This statement of policy applies to all *FDIC-insured state-chartered banks* (excluding insured branches of foreign banks) that are *not* members of the Federal Reserve System, hereafter referred to as "state nonmember banks," regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process as well as in the analysis of applications that the FDIC is required to act upon.

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

In light of these other considerations, banks generally are expected to operate above the minimum risk-based capital ratio. Banks contemplating significant expansion plans, as well as those institutions with high or inordinate levels of risk, should hold capital commensurate with the level and nature of the risks to which they are exposed.

I. Definition of Capital for the Risk-Based Capital Ratio

A bank's qualifying total capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument should not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices.

A. The Components of Qualifying Capital (see Table I)

1. *Core capital elements (Tier 1)* consists of:

—Common stockholders' equity capital (includes common stock and any related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities);

—Noncumulative perpetual preferred stock,[2] including any related surplus; and

—Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. *Core (Tier 1) capital* is defined as the sum of core capital elements[3] minus all intangible assets other than mortgage servicing rights.[4]

Although nonvoting common stock, noncumulative perpetual preferred stock, and

[1] Period-end amounts, rather than average balances, normally will be used when calculating risk-based capital ratios. However, on a case-by-case basis, ratios based on average balances may also be required if supervisory concerns render it appropriate.

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] In addition to the core capital elements, Tier 1 may also include certain supplementary capital elements during the transition period subject to certain limitations set forth in Section III of this statement of policy.

[4] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although intangible assets in the form of mortgage servicing rights are generally recognized for risk-based capital purposes, the deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts.

2. *Supplementary capital elements (Tier 2)* consist of:

—Allowances for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets;

—Cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least 20 years) and any related surplus;

—Perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative;

—Hybrid capital instruments, including mandatory convertible debt securities; and

—Term subordinated debt and intermediate-term preferred stock (original average maturity of five years or more) and any related surplus.

The definition of supplementary capital does *not* include revaluation reserves or hidden reserves that represent unrealized appreciation on assets such as bank premises and equity securities. Although such reserves will not be explicitly recognized when calculating a bank's risk-based capital ratio, these reserves may be taken into account as additional factors when assessing a bank's overall capital adequacy.

The maximum amount of Tier 2 capital that may be recognized for risk-based capital purposes is limited to 100 percent of Tier 1 capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

(a) *Allowance for loan and lease losses.* Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [5] and reserves created against identified losses.

This risk-based capital framework provides a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. By year-end 1990, the allowance for loan and lease losses, as an element of supplementary capital, may constitute no more than 1.5 percent of risk weighted assets and, by year-end 1992, no more than 1.25 percent of risk-weighted assets. [6]

(b) *Preferred stock.* Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more, provided that the stock cannot be redeemed at the option of the holder prior to maturity, except with the prior approval of the FDIC.

Cumulative perpetual preferred stock and long-term preferred stock qualify for inclusion in supplementary capital provided that the instruments can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer payment of dividends on these instruments. Given these conditions, and the perpetual or long-term nature of the intruments, there is no limit on the amount of these preferred stock instruments that may be included with Tier 2 capital.

Noncumulative perpetual preferred stock where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, including auction rate, money market, or remarketable preferred stock, are also assigned to Tier 2 capital without limit, provided the above conditions are met.

(c) *Hybrid capital instruments.* Hybrid capital instruments include instruments that have certain characteristics of both debt and equity. In order to be included as supplementary capital elements, these instruments should meet the following criteria:

(1) The instrument should be unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up.

(2) The instrument should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC. This requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.

(3) The instrument should be available to participate in losses while the issuer is operating as a going concern. (Term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument should convert to common or perpetual preferred stock in the event that the sum of the undivided profits and capital surplus accounts of the issuer results in a negative balance.

(4) The instrument should provide the option for the issuer to defer principal and interest payments if: (a) the issuer does not report a profit in the preceding annual period, defined as combined profits (i.e., net income) for the most recent four quarters, *and* (b) the issuer eliminates cash dividends on its common and preferred stock.

Mandatory convertible debt securities that meet the criteria set forth in 12 CFR 325.2(e) will qualify as hybrid capital instruments. There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

(d) *Term subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt securities) and intermediate-term preferred stock (including any related surplus) that may be treated as Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Term subordinated debt and intermediate-term preferred stock should have an original average maturity of at least five years to qualify as supplementary capital and should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC. To qualify as supplementary capital, term subordinated debt instruments issued by state nonmember banks should meet the criteria for subordinated debt set forth in 12 CFR 325.2(j), except that the minimum original maturity requirement is five years for risk-based capital purposes.

Discount of limited-life supplementary capital instruments. As a limited-life capital instrument approaches maturity, the instrument begins to take on charcteristics of a short-term obligation and becomes less like a component of capital. Therefore, for risk-based capital purposes, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in capital will be adjusted downward, or discounted, as the instruments approach maturity. Each limited-life capital instrument will be discounted by reducing the outstanding amount of the capital instrument eligible for inclusion as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, will have no capital value when they have a remaining maturity of less than a year.

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[5] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[6] The amount of the allowance for loan and lease losses that may be included as a supplementary capital element is based on a percentage of gross risk-weighted assets. A bank may deduct reserves for loan and lease losses that are in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from gross risk-weighted assets when computing the denominator of the risk-based capital ratio.

The CHAIRMAN. Thank you very much, Chairman Seidman. I am going to let Senator Garn initiate the questioning, and I have to step out, take a call. I will be right back in.

Senator Garn.

Senator GARN. Before you leave, I would like you to know that I appreciate Chairman Seidman. He has always been an asset to me because if I stand next to him he makes me look hairy. [Laughter.]

Chairman Seidman, I understand that the RTC initially established a 5.5 percent primary capital and 6 percent total capital requirement on potential acquirers of insolvent institutions. The requirement was then lowered so that the RTC now requires potential acquirers to satisfy the minimum capital level of its primary regulator. The State chartered, non-member banks would have to comply with a 3 percent core and a 4.5 percent total capital standard.

Why was the initial 5.5–6 percent standard first implemented?

Mr. SEIDMAN. That was the standard of the FDIC. So no action was really taken, since the RTC adopted all of FDIC policies, and that was the common standard of all bank regulators at that time and was the FDIC policy. So that is the policy we began with.

Senator GARN. So then you obviously had policy reasons for reducing the standard?

Mr. SEIDMAN. Well, our reason was that the Comptroller had proposed a new standard which he said he would be acting on in terms of these acquisitions. We were trying to get a common standard that we could all agree to, at least within the FDIC. We ended up between his 3 and our 6 at 4.5, which is a Solomon-like decision, I guess. But the 4.5 is somewhat different and stricter than the 5.5–6. That includes reserves as part of capital. The new standard does not.

Senator GARN. In light of the 3 percent standard in the FIRRE act, why did the RTC go to a higher level with respect to acquisitions by thrift institutions?

Mr. SEIDMAN. Well, the 3 percent, as we understand it, in the act—there are two provisions in the act. One says that there should be core capital ultimately at 3 percent, and the other is that they should meet bank standards. It was in trying to reconcile those two provisions that we arrived at the 4.5 percent standard. The standard for thrifts insofar as bidders are concerned will be determined by the Office of Thrift Supervision. They have not yet done that, when they do, it will be the standard that the FDIC will operate on in terms of bidders.

Senator GARN. Also, I am curious at the confusion over the application of 6 percent by December 1, 1991, because being intimately involved with a month of hearings, meetings, days and days of conference with the House of Representatives, regardless of whether there might have been some ambiguity in the written text, there was never any discussion whatsoever—I don't remember any discussion, and the Chairman and I sat endlessly trying to resolve that capital requirements issue—of any thought of any of the members of Congress that it take effect December 1st, and so certainly Congressional intent was clear on that issue.

So is this a matter of saying, well, we understand what Congressional intent was but the way the legal beagles have written it there is confusion?

Mr. SEIDMAN. Well, the primary issue has been one for the Office of Thrift Supervision. It really is not our issue. They have to decide what the statute says for the standard for thrifts. So that is the primary place where that has to be decided.

We were looking at bank standards and trying to determine whether there was anything in the statute that changed bank standards. We found nothing that changed that. Nevertheless, the statute did require that thrifts ultimately have standards comparable to bank standards. So that is where I think the problem comes from.

Senator GARN. Well, I understand that.

Mr. SEIDMAN. Yes.

Senator GARN. That was fully intended and everybody to get to the 6 percent bank standards. The question was by December 1st or when, and in our wildest discussions no one ever thought you were going to anticipate that all of them could come up to 6 percent by December 1st of this year.

Mr. SEIDMAN. No, I agree with that. I think that there is no such requirement, nor have I heard anybody say that there should be.

Senator GARN. Well, there was a lot of discussion in the press about it and Chairman Gonzalez also indicated at the time that certainly it was not his expectation.

Mr. SEIDMAN. Well, we certainly haven't taken any position like that.

Senator GARN. According to an analysis prepared by First Boston Corporation, the initial core deposit auctions administered by the RTC resulted in very low premiums being paid by the acquiring institutions, and I quote from the analysis. "Within days of passing the S&L bill, six deposit auctions were administered by the RTC. What is notable about the transactions is that the price paid for the deposits by the commercial bank and S&L acquirers equaled approximately one-third the norm for transactions that had been consummated prior to the passage of the S&L bailout bill."

Can you explain their statement, their analysis of what would account for these low premiums?

Mr. SEIDMAN. I haven't seen that. I don't know whether their numbers are right or not. These were bid out. They were very small transactions. So there were not a lot of bidders interested in these very small transactions. I would have to look at the numbers to see whether the premiums were different than premiums in other transactions.

Senator GARN. Well, I would appreciate if you would respond, to come back and say that First Boston is wrong.

Mr. SEIDMAN. Yes, I would be happy to do that.

Senator GARN. I don't know whether they are correct or not, but if you would get a copy of their analysis, I appreciate it if you would respond to it for the committee.

Mr. SEIDMAN. Yes, sir.

[Information furnished:]

RESPONSE TO SENATOR GARN'S QUESTION

We reviewed the First Boston document provided. We then compared the first six resolutions completed by the RTC with six resolutions done in early 1989 by the FHLBB. The average deposit premium for the two groups was very similar. We therefore believe the transactions completed by the RTC compare favorably with similar transactions completed prior to the passage of FIRREA. We would point out that the first six savings institutions resolved by the RTC were among the most seriously troubled institutions in our caseload. Furthermore, the wide variance in premiums as a percentage of insured deposits makes generalizations concerning differences based on small numbers of resolutions particularly unreliable.

Senator GARN. Unlike the typical purchase and assumption transaction, the RTC has made extensive use of a different procedure. Rather than having a healthy institution acquire the insolvent one, the RTC essentially closes the sick thrift, and arranges for a paying agent institution to pay off insured depositors. The paying agent is also given an option to acquire the assets of the failed thrift, including its branches.

The paying agent offers depositors the option of keeping their funds in new deposits held by the paying agent, and many depositors have selected this option. The result is that the transaction looks very much like a purchase and assumption, but technically does not result in the transfer of deposits. Due to this fact, the RTC determined that no exit or entry fees need be paid.

First of all, is this an accurate description of the transaction or the process?

Mr. SEIDMAN. Well, we have all kinds of transactions going on. That is an accurate description of some of those that have taken place. That is correct. Those are called deposit transfers, yes.

Senator GARN. Does the Treasury agree that no exit or entrance fee need be paid?

Mr. SEIDMAN. I am not entirely sure how they feel about that. I think they were worried that things could be structured to get around the exit and entrance fee, and we have assured them that we would not structure things for that purpose.

Senator GARN. It is my understanding that Treasury does object. So you might also check that out and respond in more detail on that.

Mr. SEIDMAN. We are in daily contact with them, so I am sure they will let us know.

Senator GARN. Well, I have just been handed an FDIC memo that states that:

> Treasury has also asserted that an exit fee should be assessed on all insured deposit transfers. They assert that if a bank becomes paying agent for the FDIC in an insured deposit transfer, the bank will retain some portion of the deposits of the failed thrift. Thus it is only appropriate that an exit fee be assessed against those retained deposits. Treasury proposed to measure the retained deposit base after a reasonable period of time, such as 90 days, and assess an exit fee on those retained deposits.

Mr. SEIDMAN. Well, you know, this is a non-issue for us, because it is all Treasury's money. If they want to provide that these are not deposit transfers, why then that cost will go in to anybody who

is going to take these over. The bids will be lower, and we will get less money, which will cost the taxpayer more money. But they will get more in transfer fees.

So from our point of view, it is really up to them, if they feel that they want to take that position. We do not agree with them. We have for years done this, before Treasury had any interest in it. That is, to simply transfer deposits to an institution and have them pay off for us, because it is a lower-cost transaction.

Senator GARN. Well, my purpose is not to get in the middle between you and Treasury, but to point out an obvious difference of opinion. I think they feel that the arrangement facilitates the transfer of deposit liabilities from the SAFE to the BIF fund without the payment of appropriate fees, and therefore increases the potential liability of Treasury.

So if you are talking to them every day, and you arm wrestle or——

Mr. SEIDMAN. We will undoubtedly resolve it with them at some point.

[Information furnished:]

RESPONSE TO SENATOR GARN'S QUESTION

The issue of whether exit fees should be required on insured deposit transfers has not yet been resolved. This issue is, however, receiving active consideration.

Senator GARN. What steps has the RTC taken to encourage the widest participation of qualified bidders? This has been discussed almost endlessly today. I would also like your comments on the problem I discussed earlier of the potential conflicts of interest, and would we be so pure that we exclude some bidders and end up costing the taxpayers more money as a result.

Mr. SEIDMAN. Well, we have instituted a very wide bidding process, in an attempt to get every bidder who is interested in bidding. We have no interest in anything but having the broadest bidder list possible. In that regard of course we announce bidding to all of the major news agencies, to the trade papers, and so forth. At times, we advertise.

In addition, we call large numbers, usually over a hundred, of institutions and others that we think might want to bid on particular properties.

I will have to say that the Government, per se, does not know a lot about sales, because that has not been a major part of our function. So we are learning as we go along. But we are certainly looking for the widest group of bidders that we can get.

Occasionally we get bidders that we do not want. Money launderers have shown up to bid. So we have to do some checking, to make sure that bidders are reputable people, and have the resources so that they do not bid without the resources. In general, we have done everything that we can.

That is one of the reasons we had to delay that one process, because we did not have a clear enough statement of who was eligible to bid out there. There was a lot of confusion, and we wanted to clear that up.

I am sure we will learn more about getting more bidders as we go along.

Senator GARN. Well, to follow to the next part of that question, though, the potential conflict—and let me give you a specific example of some that I have heard. A nationwide institution, brokerage firms, one area might be helping in the process and in another area of the country they might want to be a bidder in their own right. The transactions are separate.

The question I was asking the Secretary and others was: How do you handle those? You may have the appearance of a conflict, and yet you are excluding potential bidders. Again, I do not want to be—the type you are talking about. Certainly, if there is any conflict, money launderers, exclude them. We do not want those type of people.

But I am talking about, I guess, a gray area, an appearance of conflict of interest, which might exclude a good bit.

Mr. SEIDMAN. Right. We have tried to handle that with the rule of reason. If the individuals are working for us, for instance, in one area, to help us sell something, they cannot bid on that property, but they can bid on other properties which we may have for sale. So we have tried to use the rule of reason in that.

We have another potential problem in the statutes providing that anyone who had caused a loss to the fund cannot work for the institution. Question: Does that mean if one partner out of 8,000 partners caused a loss to the fund that the whole firm is outlawed, and so forth?

So we have some difficult questions, and we are trying to use the rule of reason to get the maximum bidders we can get.

Senator GARN. Does the RTC have any preference for banks as potential acquirers, as opposed to other types of institutions?

Mr. SEIDMAN. We have no preference for any type of acquirer, as long as it is reputable.

Senator GARN. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask you this question, Mr. Seidman.

You have got an enormously complex and difficult job to do, and you are one of the people in our system who heads an independent agency. The FDIC in effect is a free-standing, independent agency.

On the other hand, under the RTC you come under the policy direction of this Oversight Board that we had earlier. That is a unique board, because you have got two Cabinet officers, you are going to have two private sector people, once they are identified, and you have got the Chairman of the Federal Reserve who, like yourself, is a free-standing, independent agency person.

Do you feel fully independent today?

Mr. SEIDMAN. Well, we are not as independent as we used to be. I tell everybody at the place, "You will all remember the good old days." We are, obviously, as the RTC, using appropriated funds, and therefore are not using independent premiums which we have gotten from the banks. So we are certainly not as independent.

That spills over into the FDIC, because the SAFE Fund is also being funded at least initially by taxpayer funds. So we have a somewhat changed situation. I am hopeful that, long range, the FDIC will be able to return to its basic independent status, which I

think has been very important to us being able to handle matters the way we have in the past.

The CHAIRMAN. When you have to make an FDIC judgment, do you feel absolutely free and unencumbered in making that judgment?

Mr. SEIDMAN. Well, we certainly believe that the FDIC is independent. Two of our current four board members work for Treasury. So to that extent, the decisions of the FDIC are based on what the board votes for. So from time to time there may be influences involved there. On the other hand, we all have influences.

I think, as a practical matter today, the FDIC in its role as FDIC has continued to be an independent agency. On the other hand, if you look at the RTC—for instance, OMB wants to clear our testimony before we come up here, because we are an appropriated agency; whereas with an independent agency, we are not subject to that rule.

I am not entirely sure whether they are right in that, but that is the kind of questions that come up.

The CHAIRMAN. Did they clear your testimony today?

Mr. SEIDMAN. We gave it to them, and I—I do not think they changed it any, at least I did not change anything.

The CHAIRMAN. Do you know if they suggested changes to it?

Mr. SEIDMAN. I do not. I really do not know. I think we told them that we were not sure that they had the right to clear it.

The CHAIRMAN. I see.

Mr. SEIDMAN. We are in enough tangles with enough people, so we are not looking for any more difficulties. [Laughter.]

The CHAIRMAN. In terms of the Oversight Board, it seems to me that the Oversight Board has the responsibility to set broad policy, establish the procedures, and in effect lay down that sort of policy framework. Then, it is your job within that framework to go ahead and to execute, you and others in the RTC.

In that respect, once you have made your judgment within that policy framework, do you feel fully free to follow through and be independent in exercising that judgment?

Mr. SEIDMAN. Yes. I think we will certainly feel free to exercise the judgment within the policy guidelines. However, I have to tell you, as was stated by Senator Garn and others, almost everything we do will be subject to different opinions and criticism.

The CHAIRMAN. Right.

Mr. SEIDMAN. And audit by six different organizations. Therefore, the rule of good judgment is very hard to apply, because it is much easier to apply the rule that 2 percent is it and if it is 2-and-one-tenth you do not do it. In other words, it does have a tendency to get to codification. I think Chairman Greenspan referred to that.

These things, in my opinion, really need judgment. But to the extent that you have six different auditors and all of that, you are going to veer away from judgment and towards saying, "Look, the rule is this, and I followed the rules and there they are." So that is inherent I think in the kind of set up we have.

The CHAIRMAN. Well, I take a different view of pressure after the fact rather than pressure before the fact. I think you are entirely subjected to pressure after the fact, and people saying, "Well, you

did it right," or "You did it wrong," or "Why did you do it this way?" or what have you.

But on the front end, once you are clear you are operating within the policy guidelines and directions, I do not think there should be any pressure.

Have there been any instances yet where you felt pressure before the fact?

Mr. SEIDMAN. No, I do not think so. At one time, the board requested the names of institutions we were going to deal with. We told them we did not think that was appropriate, and they studied it and agreed with it.

The CHAIRMAN. Well, I would hope that if there is ever a time—and I say this not just in this instance, I would say it to anybody in a comparable situation, and I have said it before in other situations—but if there is ever a time when you feel like anybody is attempting to exert pressure from any direction before the fact—before the fact—I think I know you well enough to know that you would resist it, but I also think this committee needs to know that.

As a free-standing operation, I would expect you to report that to us, and I would like the notice to go out, so that anybody that ever felt that urge would think twice about it because that cannot be tolerated, as I see it.

Mr. SEIDMAN. Thank you. We will report it.

The CHAIRMAN. Now, let's cover a couple of other things here.

I went back and I was reviewing the record. When Mr. Glauber of the Treasury Department appeared here in his confirmation hearing in May—now, you know, May is a long time ago and I am sure, as fast as his life has been moving and as complex as the issues are that he deals with, it probably seems like 10 years ago—but in May of this year, he appeared here.

When he was asked about the size of the RTC, his observation was that he thought it would be a small agency with only about 100 employees. Now, several weeks ago, the RTC's executive director stated that he expects the RTC to have 4,000 employees, which is quite a difference than something like 100.

Now, in your prepared remarks, you state that the RTC could have up to 10,000 employees next year. So the number is getting bigger, and to say that it is an order of magnitude higher than what the estimate of Mr. Glauber was back in the early part of the year is an understatement. It appears that 750 FDIC employees that you detailed to the RTC will all be interviewing other people for yet more jobs.

Now, given the scale of the task, I cannot say that I am surprised that you need this much horsepower and personnel to do it. If you go back and look historically at what it has taken in the FDIC to handle asset dispositions on the banking side that you had to deal with, and if you used appropriate ratios, you can see why this is an enormous job, especially if it is going to be done right.

I am wondering, as you sit here today, how many employees do you think we are going to have working for the RTC? Give me a little sense as to how you make the estimate.

Mr. SEIDMAN. First, I would say, with respect to Secretary Glauber's statement, I believe he was referring to the Oversight Board

staff, and not to the whole RTC. I do not think anybody could have thought that the RTC at the size it was could have——

The CHAIRMAN. Well, perhaps he was. I do not mean to mischaracterize his statement, if that is what he intended.

Mr. SEIDMAN. Today, of course, the number of people that we will have will depend on the strategic plan, and how we are going to dispose of assets.

Let me illustrate. If we sell an institution with all of the assets in it at one time, then we get that all over in maybe a month. If we take the assets out of the institution and sell them individually, that may take two or three years. So obviously, it takes a lot more people if you do things one way than if you do them another way.

We need to have the strategic plan in place in order to be able to accurately estimate personnel. Just to deal with the assets that we are reasonably certain will be coming to us, and to deal with them in the sense of contracting with the private sector to actually do the work, will take many thousand people. That is why we think the minimum will be 5,000, and it could well be much more than that as we go along.

We will probably have somewhere in the area of 50 to 60 thousand lawsuits. We have to have either lawyers or people to hire lawyers. Every time you hire the private sector, there is potential for fraud, for the Government getting ripped off. We have got a lot of experience of that in the past. It takes people to see that that does not happen.

The CHAIRMAN. I take it that, when we get to the point of selling individual pieces of real estate—in other words, you do not do the package deals, you have got a whole mixed bag of real estate holdings and asset holdings that have to be sold off one by one or in small clusters, or what have you—I assume that part of that, there you have got a more general population of buyers.

When you are selling whole institutions, you have obviously got to have people, as you say, who are not money launderers and people who have the money to be able to perform and otherwise meet the requirements. But on the smaller scale activities, I assume that part of your practice will be to have prominent public notice.

If you are going to sell assets in Houston, Texas, in the newspaper or whatever in Texas it will be a prominent public notice that is early enough ahead of when you are going to conduct the taking of bids and what have you so that anybody that can read can see this. I mean, it will be generally disseminated to a broad audience. Is that fair to say?

Mr. SEIDMAN. That is correct. That has been the FDIC policy in the past. We advertise in newspapers with very sizeable ads. We of course release the information to the press and so forth. So we put on a regular advertising campaign, as any private sector institution would.

If we are holding an auction, why the auction is advertised, and so forth.

The CHAIRMAN. I think that is very important, that the general public have a chance to be part of this if they are so interested.

Let me ask you how we are coming on the review of the 1988 deals.

Mr. SEIDMAN. We have sent to the Oversight Board our suggestions for policies to be put in place to review those deals. Our board passed those at this last meeting. So we are waiting for the Oversight Board to react to those. As soon as we get their reaction, we will be ready to proceed.

To a substantial extent, it recommends that we use outside, private sector institutions to help us with a very, very large problem that is involved in reviewing all of these transactions. They are filled with potential accounting and legal and so forth problems.

We are not attempting to undo any legally binding commitment on the part of the United States. We are reviewing the transactions to determine whether, within the transaction or anything that happened the United States has any rights that might lower the cost.

The CHAIRMAN. I assume, however, that should you find an impropriety, I assume that could be used as the basis to reopen what might otherwise be a legally binding contract.

Mr. SEIDMAN. I am sure it would be.

The CHAIRMAN. If you should find such a situation as that, you would act on it, I assume.

Mr. SEIDMAN. Yes.

The CHAIRMAN. In terms of this, you have put together your recommended procedure. You have sent it to the board. The Oversight Board is reviewing that. We all heard today that they are going to get back to you on a timely basis.

Do you feel familiar enough with that subject at this point to feel that there are savings out there that can be realized in one or more cases?

Mr. SEIDMAN. Our initial review of it indicates that there are things that can be done to save money under these contracts, legally under these contracts. We think that when the review is finalized there will be some savings to be made.

The CHAIRMAN. Are there any other problems that you see on the horizon that we have not touched on here, that we really need to think about and that we need to be aware of?

Mr. SEIDMAN. I think you have touched on almost everything that I can think of, Mr. Chairman. I think it has been noted that this is a new type of institution. As far as I know, we have never had one quite like it in the Government. Therefore, getting it to work smoothly will certainly take the best efforts on everybody's part, and I think we have had that.

While we have not always agreed with the Oversight Board, and probably will not, I think we have it on a workable basis. I would express my appreciation to Secretary Brady for ensuring that that is taking place.

The CHAIRMAN. Well, you know, I appreciate that comment. He made the observation in passing that there are healthy frictions that exist here. I think it is proper that there should be.

In other words, I think it is inherent in the nature of things, where you have got highly skilled people with different responsibilities, different vantage points, that there is going to be a certain amount of constructive difference of opinion and head-knocking from time to time. That does not bother me.

I mean, if that is all we had, and we got tangled up in that, and we were not making progress, it would bother me. But I think we

are bound to have a certain amount of that, particularly on the front end, where we are sorting out a very complex problem, setting up machinery of an unprecedented nature and complexity.

This is a brand new experience, for the Government to have to tackle something of this dimension. So it is not an easy process. I am sure that your work days are far longer than you would like them to be, and will continue to be that way.

Let me ask you one other thing. The committee wants to make sure that the FDIC and the RTC have the best available resources to do the job. Financial talent has gotten expensive out in the market place, and it is not easy to attract and hold the talent you want.

You testified 2 weeks ago that the FDIC had already moved 750 experienced staff people over to the RTC, which I mentioned a minute ago. I am wondering if you feel and can assert to us that the FDIC is going to have enough experienced staff left to do its job. Are there any OPM changes in hiring practices that we ought to consider trying to facilitate, so that you could attract and retain the qualified staff that a job of this dimension is going to require?

Mr. SEIDMAN. We believe we can continue to fulfill our regular FDIC commitments. All of the people that we are transferring over come from our liquidation side of our business, so we are not imperiling the supervision side through transfers to the RTC. With a few exceptions, we are using all people from the liquidation side.

However, we do need a considerable increase in our supervision force because of our responsibilities with S&Ls under the SAFE Fund. In that regard, the most important thing that could be done by OPM to help us would be to further ease the rules for hiring, so that we can hire promptly based on merit.

Right now, the rules provide that students with a 3.5 average and above we can hire directly like any private concern. That is generally the top 10 percent of the class. We have been getting about half of our people from there, but we are not able to get all that we need. We would much appreciate it if they would say that we could hire directly anybody who has just an old "B" average. In the long run that will both improve our staff, and get us moving much more quickly in terms of hiring.

The CHAIRMAN. Why don't you send us any recommendations along that line.

Mr. SEIDMAN. I would be pleased to do that.

[Information furnished:]

RESPONSE TO CHAIRMAN RIEGLE'S QUESTION

We continue to strongly support the lowering of the grade point average (GPA). We have endorsed the U.S. OPM's proposal to lower the GPA and have been told optimistically that it is expected to be lowered to 3.0 by the end of the year.

The CHAIRMAN. We really want to help facilitate in getting this job done.

Senator Garn, did you have any other questions that you wanted to raise at this point?

Senator GARN. No, I do not. Only, I cannot resist repeating what the Chairman leaned over and said to me. He said, "That would eliminate both of us from consideration." [Laughter.]

The CHAIRMAN. As undergraduates. We did better in graduate school.

Mr. SEIDMAN. Well, I did not say anything about my marks. [Laughter.]

The CHAIRMAN. Let me just say, before finishing with you, Chairman Seidman, that I want to announce for the record that the committee has approved the nominations of the three nominees earlier by unanimous vote, and they will be so reported.

Let me just finally conclude by saying that we appreciate very much your personal commitment and leadership effort to this job. This is tough work. I am glad you are in the job you are in. The committee is going to continue to work closely with you.

Mr. SEIDMAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

The committee stands in recess.

[Whereupon, at 12:25 p.m., the committee was adjourned.]

[Response to written questions follow:]

OVERSIGHT BOARD
RESOLUTION TRUST CORPORATION
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JAN 26 1990

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to respond to your letter of October 12, 1989, in which you requested answers to written questions submitted by members of the Committee on Banking, Housing and Urban Affairs related to the October 4 hearings held before the Committee.

Enclosed with this letter are the answers prepared by the staff of the Oversight Board. Answers prepared by the staff of the RTC have been sent directly to the Committee.

I hope that the Committee will find these answers to be helpful.

Sincerely yours,

Daniel P. Kearney
President and CEO

Enclosures

SENATOR RIEGLE QUESTION 1

Question

The two bureaus of the Treasury Department responsible for regulating financial institutions have endorsed a 3% core capital leverage limit. The RTC however has adopted a 4.5% leverage limit for thrifts and state banks that result from RTC transactions. Why would the Treasury support the lower 3% core capital leverage limit?

Answer

The Office of the Comptroller of the Currency (OCC) has published for public comment a proposed core capital to total assets leverage ratio of 3% that would operate in tandem with an 8% risk-based capital requirement. The core and risk-based capital standards would become effective December 31, 1990. Until that time, national banks are required to maintain a primary capital to assets ratio of 5.5%.

The Office of Thrift Supervision has issued an interim final regulation that became effective December 7, 1989, requiring a minimum core capital leverage ratio of 3%, a tangible capital ratio of 1.5% and a risk based capital ratio of 6.4% that will phase up to 8% by December 31, 1992.

The RTC requires a 4.5% tangible capital leverage ratio for newly-formed state-chartered non-member banks and thrifts created as a result of RTC transactions. Capital in these cases is defined under risk-based guidelines and includes at least 3.0% Tier I capital and no more than 1.5% Tier II capital. (Loan loss reserves are excluded.) The RTC does not have a risk-based capital ratio requirement.

Treasury maintains that the additional Tier II capital in the RTC leverage ratio does not provide the same cushion against losses that Tier I capital provides and probably does not significantly enhance the insurance fund's protection against risk. We strongly believe that the leverage ratio should always consist of real, tangible capital and should not be diluted with weaker elements that can be further diluted over time and that falsely inflate the amount of protection provided to the insurance fund.

The 3% core capital leverage ratio, operating in tandem with an 8% risk-based capital requirement, does provide significant protection to the fund. An underlying principle of the risk-based capital approach is for institutions to rely on risk-based capital as their primary protection against losses due to credit and interest rate risk. Furthermore, as additional protection for the insurance fund, institutions should have a cushion of core capital that acts as a defense against any risk of losses not covered in the risk-based capital component, such as poor management or fraud and abuse.

SENATOR RIEGLE
QUESTION 2

Question

Mr. Seidman's testimony at the hearing made it clear that the adequacy of the funding is in doubt. Mr. Seidman testified that the RTC may be required to handle over 600 failures with combined assets exceeding $300 billion. He further testified that the greatest uncertainty involving the adequacy of funding was the number of thrifts that would be referred to the RTC by the OTS. At this time, what is the best estimate of the OTS of the number and asset size of the thrifts it will refer to the RTC over the next three years? Please give district-by-district totals for the number and size of thrifts in each Federal Home Loan Bank district.

Answer

OTS has recently identified a preliminary list of 225 to 290 thrifts that are likely to be transferred to the RTC's caseload (in addition to the 293 currently in conservatorship and the 40 that have already been resolved). This data will be analyzed in more detail when it becomes final, which is expected in early February.

The RTC now believes that it may need more than $50 billion to cover losses for thrifts in conservatorships and thrifts identified as likely to be placed in conservatorships over the next 2-1/2 years. We will carefully examine the RTC's data supporting this estimate to determine if any of the $32 billion in funds provided in FIRREA for future problems should be reallocated to the RTC.

A state-by-state list of thrifts that are insolvent, that have no tangible capital is attached.

TANGIBLE GAAP INSOLVENT THRIFTS
By State
(EXCLUDING RTC THRIFT CONSERVATORSHIPS AND RESOLVED CASES)

(Data as of 9/30/89)

State	Number	Assets ($ in Mils)
Arkansas	3	1,305
Arizona	1	6,736
California	3	2,772
Colorado	1	39
Delaware	1	357
Florida	13	19,175
Georgia	5	2,936
Hawaii	1	3,082
Iowa	4	1,674
Illinois	31	16,939
Indiana	2	202
Kansas	1	152
Kentucky	2	556
Louisiana	6	2,680
Massachusetts	1	257
Maryland	5	1,350
Minnesota	7	3,637
Missouri	2	3,614
Mississippi	4	198
North Carolina	5	2,003
North Dakota	1	126
Nebraska	6	6,605
New Jersey	13	5,155
New Mexico	3	2,301
New York	10	28,150
Ohio	13	5,842
Oklahoma	4	2,408
Oregon	2	8,616
Pennsylvania	7	5,128
South Carolina	2	1,236
South Dakota	2	57
Tennessee	2	194
Texas	22	18,017
Virginia	5	2,386
Washington	1	706
West Virginia	1	78
Wyoming	1	263
	193	156,929

SENATOR RIEGLE
QUESTION 3

Question

What measures will the Oversight Board adopt to ensure that it is monitoring the effectiveness and adequacy of RTC's funding?

Answer

The Oversight Board believes that, to ensure that the objectives of FIRREA are met, it is essential to monitor the effectiveness and adequacy of RTC funding. To this end, the Oversight Board (i) sets policies to provide guidance to the RTC on the use of its funds for case resolutions, high cost funds replacement, liquidity advances, and operating expenses, (ii) monitors on an on-going basis the operations of the RTC, and (iii) reviews specific resolved cases, and the RTC case resolution process in general.

To date, the RTC has disbursed approximately $12 billion to resolve 40 thrift cases, (approximately $6.4 billion to pay for net thrift loses and $5.6 billion to acquire assets associated with case resolutions); $8.5 billion to replace high cost funds at about 150 thrifts, and approximately $1.9 billion to provide liquidity to about 70 thrifts. Funds available for future case resolutions include approximately $7.4 billion from the first RefCorp issues, repayments from high cost funds replacement and liquidity advances, and amounts that will be collected from the sales of receivership assets.

SENATOR RIEGLE
QUESTION 4

Question:

The mechanism for approving RTC requests for funds was briefly discussed during your testimony. Given the confusion about the attempted $7.9 billion loan from RTC to the five failed thrifts, how does the Oversight Board monitor the disbursement of funds by the RTC to see if it complies with the Oversight Board's conditions? Please provide a written summary of the process of making the decision to lend the $7.9 billion to the thrifts, and of the process of making the later decision not to lend the money.

Answer:

This answer is in two parts. The first part, designated (A), responds to the part of the question which concerns Oversight Board monitoring of the disbursement of funds by the RTC. The second part, (B), responds to the part of the question which concerns a transaction that the RTC had proposed, but did not execute, in late September.

(A)

As you noted, Secretary Brady described in his testimony the two step process by which the Oversight Board authorizes and releases funds to the RTC.

In addition to controlling the disbursement of funds from the Oversight Board to the RTC, the Oversight Board monitors the use of the funds by the RTC after they are made available to the RTC. This monitoring is accomplished by means of a two-part reporting system. First, the RTC must, in written form, inform the Oversight Board of (i) every contemplated advance of funds in connection with a case resolution, prior to the advance, and (ii) every advance for high cost funds replacement or liquidity funding, within two business days of making the advance. Second, the RTC provides the Oversight Board with reports which list every advance of funds it makes; these reports are used by the Oversight Board for periodic reconcilements of funds advances.

(B)

In its first quarter business plan, the RTC informed the Oversight Board that it expected to complete certain large case resolutions by September 20, 1989. However, during September it became clear to the RTC that it would not be able to complete these large transactions until shortly after September 30.

As a result of this schedule change, a question arose

regarding how this short timing delay might affect the availability of the funds that the RTC had internally allocated in its business plan for the resolutions. The federal budget implications of not expending, until after September 30, funds that were essentially earmarked for transactions originally expected to close by that date, were unclear. However, the RTC understood that it might need to "commit" the funds by September 30 in order to be able to complete the transactions.

In an effort to comply with its understanding of the intent of Congress regarding Fiscal Year 1989 budgeting, the RTC began to review options to ensure that the full $20 billion of appropriated funds, including the funds needed to complete the large transactions, would be committed before the end of the period.

After a full review of the options, including discussions with the Oversight Board and Treasury, the RTC elected to commit these funds by establishing on its books reserves equal to the expected resolution advances to be made in the very near future. This practice is consistent with established FDIC practices for booking expected losses in bank failure cases. As expected, about two weeks later, the resolutions were completed.

SENATOR RIEGLE
QUESTION 5

Question

What specific steps will the Oversight Board take to monitor the bidding process used by the RTC for the sale of thrifts and thrift assets to ensure that the bidding process is open, fair, and competitive? How will the Oversight Board adopt a policy that enforces your edict against "unseemly" behavior, such as awarding contracts to persons who make large political contributions?

Answer

The strategic plan for the RTC, released by the Oversight Board on December 31, 1989, directs the RTC in the following ways regarding the resolution of insolvent thrift institutions:

Publicize the procedures that bidders must follow to bid on institutions.

By January 15, 1990, develop written plans for soliciting bids from all interested qualified buyers with preference to type of organization, including procedures of encouraging the active participation in the bidding process by women and minorities.

By January 15, 1990, develop written procedures for:

- making available to all potential bidders, to the extent practical, full information on each institution.
- making available to all potential bidders the terms including financial statements, deposit levels, branches, and organization structures on each institution under RTC jurisdiction; the terms of previous transactions;
- the timely and nondiscriminatory evaluation and selection of offers; and,
- notifying rejected bidders within 30 days.

By March 30, 1990, establish written procedures for accepting and investigating complaints of discrimination or unfair treatment in the consideration of offers.

Develop written guidelines and procedures regarding the resolution of minority-owned institutions, consistent with the policies set forth in the strategic plan. To facilitate continuation of a minority institution, the RTC may assist a qualified minority acquirer by postponing for up to nine months the closing of a transaction until the acquirer finds

permanent capital or by providing up to nine months of bridge financing on up to two-thirds of the required capital for the acquired institution. The financing is to be provided at market rates and secured by the capital placed in the institution by the acquirer. The maximum amount of such RTC financing that can be provided under this program may not exceed $32 million. The initial equity investment of the acquirer would be at risk in the event the acquirer were unsuccessful in raising the required capital within the nine-month time period.

Similarly, with respect to the disposition of assets by the RTC, the strategic plan directs the RTC as follows:

By January 15, 1990, establish guidelines concerning contracting with public and private entities for performance of asset management and disposition functions. Develop a set of indicators by which utilization of private sector contractors will be measured.

By January 15, 1990, establish procedures to assure compliance by contractors with the ethics and conflicts of interest provisions of FIRREA.

By January 15, 1990, establish guidelines to assure open and fair competition for asset management and disposition contracts.

By January 15, 1990, develop guidelines and procedures for notifying rejected bidders within 30 days.

By January 15, 1990, develop guidelines and procedures for actively soliciting offers for assets from minorities and women.

By January 15, 1990, develop guidelines and procedures prohibiting discrimination on the basis of race, sex or ethnic group in the solicitation and consideration of offers.

By March 30, 1990, establish written procedures for accepting and investigating complaints of discrimination or unfair treatment in the consideration of offers of services to the RTC.

By January 31, 1990, develop and present to the Board for approval a minority and women outreach program according to the policies outlined in the strategic plan. The program should allow up to a three percent price advantage for minority and women contractors. The cost to the RTC of providing this price advantage should not exceed $2 million per annum and $6 million in aggregate.

"Unseemly" behavior is addressed both in the strategic plan and in the interim standards of ethics and conflicts of interest

issued by the RTC in October 1989. In addition, the full set of regulations pertaining to ethics and conflicts of interest for contractors was released for public comment on November 28, 1989. With regard to political favoritism, the strategic plan states that:

> By March 30, 1990, the RTC shall develop written guidelines and procedures, specifically appropriate for the RTC, that draw upon current FDIC policies and that delineate internal operating procedures and methods for responding to inquiries from those who are or have been in political office. In the interim, all communications initiated by senior public officials (or their staff) with employees conducting the work of the RTC that are intended to influence a case specific decision currently before the RTC, shall be logged and the record of such communications should be made available for public inspection.

The responsibility of the Oversight Board is to monitor that all the deadlines in the strategic plan are met, that the guidelines and procedures produced by the RTC are consistent with policy and objectives established by the Oversight Board, and that the RTC follows the adopted procedures and guidelines.

SENATOR RIEGLE
QUESTION 6

Question:

To what extent does the Oversight Board intend to allow the RTC to fund the carrying costs of assets through the federally insured deposits solicited by either bridge banks or new federal mutual savings and loans? Will the Oversight Board put some limit on the overall borrowing by such institutions, or use some other mechanism to limit the exposure of the taxpayer to the operations of these temporary institutions? According to recently published stories, the RTC is considering creating a special purpose bridge bank or mutual savings and loan to issue securities for RTC's working capital purposes. Please comment on the options being developed by the Oversight Board in this area.

Answer:

This answer is in two parts. The first part, designated (A), responds to the part of the question which concerns how conservatorship assets are funded. The second part, designated (B), responds to the part of the question which concerns options for raising RTC working capital.

(A)

At the time a thrift is declared insolvent by its primary regulator and enters the conservatorship program, its funding profile typically is similar to that of other thrifts in the industry. Normally, the thrift is funded with (i) customer and (to a lesser extent) brokered deposits and (ii) borrowings (often secured) from the market and from Federal Home Loan Banks.

This funding base remains in place during the time a thrift is in conservatorship, unless the thrift is unable to raise funds at reasonable cost (or not at all) from market sources. In such cases the RTC selectively may temporarily place funds in the thrift to provide liquidity and to reduce its operating losses, in accordance with Oversight Board policy. However, the RTC does not commonly pay off all depositors and/or secured creditors until the thrift is resolved. Indeed, the RTC anticipates that, in many cases, these funding obligations will be transferred to, or assumed by, the institution to which the thrift is sold.

The extent to which a thrift's high cost funds are paid off by the RTC while the thrift is still in conservatorship depends on, among other things, the amount of funds available to the RTC that is not committed to current case resolutions. Such high cost funds replacement can be viewed as a kind of "down payment" of the expected cost of resolution. It is important to note that this constraint is reinforced by Oversight Board policies that direct

the RTC to, as its first priority, use its funds to resolve thrifts under its jurisdiction as quickly and cost effectively as possible.

(B)

As you have noted, the Oversight Board is working with the RTC to develop options for raising working capital. Congress has recognized, both in the drafting of FIRREA and in recent hearings, the important role of working capital, and its necessity to permit the RTC to carry out its responsibilities under FIRREA. Working capital permits the RTC to pursue the dual goal of lowering the cost of resolving thrifts while at the same time avoiding the pressure to "dump" assets.

The Oversight Board and the RTC have considered a range of options and have narrowed those to three approaches. However, important policy, legal and operational issues are in the process of being resolved. We expect to finalize our plans by mid-February and begin providing working capital to RTC shortly thereafter.

In any case, FIRREA places a restriction on the extent to which the RTC may issue obligations. The RTC may issue obligations only to the extent that such obligations are covered by the fair market value of its assets. We believe that this restriction gives assurances that, whatever options are selected, the RTC will be able to raise needed working capital that will not result in additional costs to the taxpayer.

SENATOR GRAHAM
QUESTION 1

Question:

Money: one of my overriding concerns during the markup of the S&L bill was that we were not supplying the RTC which enough money to handle the S&L problems. On page 10 of Chairman Seidman's testimony (paragraph 4, next to last sentence), he says "The RTC may be required to handle nearly 600 failures during the next three years with combined assets exceeding $300 B (book value)." Do you still believe you have the capability, with the amount of money we have given you, to handle the problem?

If it ever gets to that point, we would like for you to come to us of your concerns.

Answer:

We have just been informed by the RTC that it may need more than $50 billion to cover losses of thrifts in conservatorship and thrifts identified as likely to be placed in conservatorship. The Oversight Board will carefully evaluate the RTC's data supporting this estimate. As we have said many times, the ultimate cost may ultimately exceed $50 billion for the RTC, and it may be necessary to reallocate funds from the $32 billion provided by FIRREA for SAIF. If that occurs, we will advise Congress in a timely manner of the need for this reallocation. The most important point, however, is that RTC currently has more than adequate funds to proceed with case resolutions, so long as a working capital plan is adopted.

SENATOR GRAHAM
QUESTION 2

Question:

Monitoring Money: What kinds of monitors should the Congress put in place to make sure an underestimation of the need for assistance does not occur again?

Answer:

The record shows that, throughout the process which led to passage of FIRREA, there was healthy public debate about the amount that would be needed to solve the savings and loan problem. Different estimates were put forth by thrift consultants, academics, elected officials, government agencies, and others.

We have every reason to believe that this debate will continue for some time; some will argue that the cost will be higher, while others will take the opposite view. To our knowledge, no one claims to know with certainty what the final cost will be once the job is complete.

Therefore, a case can be made that the best "monitor" that Congress could put in place is to continue to encourage free and open debate and review of the process as it moves forward. It is our view that Congress instilled FIRREA with just such a spirit.

SENATOR GRAHAM
QUESTION 5

Question:

Secretary Brady, on page 8 of your testimony you discuss how money is requested by the RTC and approved by the Oversight Board. What has been the response time from RTC request to Oversight Board approval? Is your system working?

Answer:

The Oversight Board has responded promptly to all requests for funds from the RTC. Furthermore, provided that such requests continue to be submitted in the same manner as has been done to date, the Oversight Board anticipates that this process will continue to function smoothly. The system is indeed working, a view that we believe is supported by the fact that, to our knowledge, the system has never caused the RTC to delay a case resolution or other related action.

SENATOR SASSER
QUESTION

Question

In the credit markets section of yesterday's Wall Street Journal, there was an article that indicated that the bond market was skittish on reports that the RTC hoped to issue as much as $100 billion of short-term debt over the next few years. Well, I have to admit that this prospect made me a bit skittish too. Is this true? Has the RTC figured out a way not to have this $100 billion in notes affect the federal budget? When were you planning to let us know about this? As I understand the bailout bill, the RTC has limited debt issuance authority. Are you planning to ask for new authority? Will you be issuing notes of guarantees?

Answer

The RTC must design specific working capital mechanisms consistent with the general policy to be established by the RTC Oversight Board. A range of options has been considered and these have been narrowed to three approaches. However, important policy, legal and operational issues are in the process of being resolved and no final decision has been reached at this time.

We expect a final plan to be adopted by mid-February and to begin providing working capital to the RTC shortly thereafter. Congress will be fully advised before any working capital obligations are issued.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRANSTON
FROM NICHOLAS F. BRADY

1. Affordable Housing Objectives

One of RTC's five objectives is to preserve affordable housing. The conferees concluded that, if RTC performs its mission well, the goal of affordable housing will enhance the Corporation's ability to expedite the sales of residential property and benefit the taxpayers.

The Oversight Board has yet to publicly enunciate how it plans to carry out these housing goals.

What assurances can you give the Committee that the affordable housing objectives will be met through the disposition process? What are the various administrative and regulatory steps which must be taken before a fully operating disposition program is put into effect? How long will such actions take?

1. Affordable Housing Objectives

To assure that the Resolution Trust Corporation's (RTC) disposition process meets FIRREA's housing goals, the Oversight Board's Strategic Plan for the RTC establishes goals and objectives to maximize the availability and affordability of residential real property for low- and moderate-income individuals. The Strategic Plan was issued on December 31, 1989.

The Strategic Plan requires the RTC, no later than March 30, 1990, to develop and submit to the Oversight Board comprehensive guidelines and procedures to implement the low- and moderate-income housing provisions of FIRREA. These guidelines and procedures will address the many issues relating to FIRREA's housing provisions, including:

- marketing strategies;
- identifying and using clearinghouses;
- maximizing the effectiveness of the right-of-first-refusal period for eligible properties;
- qualifying households, non-profit organizations and entities as potential purchasers of eligible properties;
- determining net realizable market value of eligible properties;
- choosing among competing offers to acquire multifamily and single family properties;
- coordinating disposition of eligible residential properties with other government agencies and organizations;
- identifying issues and alternatives regarding financial assistance, price discounts and below market financing, for the purchase of low- and moderate-income housing;
- the use of bulk sales for eligible properties;
- enforcement of low-income residency requirements for eligible properties;

- the use of secondary mortgage market entities to provide housing opportunities for low- and moderate-income families;

- conveyance of assets to agencies and organizations participating in HUD's Urban Homesteading program;

- consulting with national and regional advisory boards about strategies to meet low-income housing goals;

- consulting with the Federal Housing Finance Board about coordinating the Affordable Housing Program and the Community Reinvestment Program; and

- establishing guidelines for determining whether assets have no reasonable recovery value so that the RTC may consider potential public uses for these assets, including housing.

The Strategic Plan also requires that the RTC, by March 30, 1990, in consultation with the Oversight Board and Congress, determine the extent of information required to be reported under FIRREA concerning affordable housing activities of the RTC. By March 30, 1990, the RTC must develop and implement, to the extent possible, the formats for semiannual and other periodic reports. By May 30, 1990, the RTC must report to the Oversight Board on the results of pilot projects to test eligible property disposition concepts.

Finally, the Strategic Plan recognizes that to avoid keeping needed housing off the market and to avoid any further deterioration of eligible properties while the comprehensive guidelines are being developed, the RTC may sell eligible properties in accordance with the housing provisions of FIRREA. Before commencing such dispositions, however, the RTC must prepare and provide to the Oversight Board interim guidelines that comply with FIRREA's low- and moderate-income housing provisions. To facilitate the Oversight Board's review of the low- and moderate-income housing program, the RTC will report regularly to the Oversight Board on its experience in meeting the low- and moderate-income housing objectives of FIRREA.

2. "First Look"

The RTC provisions require the Corporation to give public agencies and nonprofit organizations a "first look" at residential property. The "first look" would give these buyers a little extra time to arrange financing so that they can keep the property as affordable housing.

Many public and private groups have expressed a great interest in receiving information as soon as possible on eligible residential property held by the RTC.

What is the schedule for implementing the "first look" requirement in an efficient and timely fashion? To what extent have you consulted with the various clearinghouses designated in the law?

2. First Look

The Strategic Plan states that the RTC's implementing procedures for housing disposition should be designed to maximize the effectiveness of the right-of-first-refusal period, and the Strategic Plan reflects the Board's intention that these procedures be implemented in a timely and efficient manner.

Specifically, the Strategic Plan requires that the RTC, by March 30, 1990, establish guidelines for determining which national non-profit organizations have the capacity to act as clearinghouses and to develop strategies to ensure the effective and efficient dissemination of information to clearinghouses (including guidelines for contracting with clearinghouses). Also by March 30, 1990, the RTC must develop (1) written guidelines to assure that clearinghouses make adequate information and access to properties available to qualified purchasers on a timely basis, and (2) a strategy for actively marketing eligible properties for sale to qualified individuals and organizations.

Oversight Board staff have met with the Federal Housing Finance Board and representatives from several state and national organizations which may be eligible to act as clearinghouses, including the following: the National Council of State Housing Agencies; the Center for Community Change; the National Low-Income Housing Coalition; and ACORN. The RTC also has contacted the governor of each state requesting designation of the state's housing finance agency as a clearinghouse. Criteria for the designation of national nonprofit organizations as clearinghouses also are being developed.

3. Financing of Sale

Congress has given RTC the discretion to use a series of financing tools to dispose of residential property in ways that achieve affordable housing objectives. The RTC is authorized to provide seller financing at market interest rates for the purchase of eligible residential property. The RTC is also given the discretion to provide seller financing at a subsidized rate and provide concessions on price.

Has the Oversight Board discussed the extent to which any of these tools will be utilized? What factors will influence RTC's use of seller financing? What will influence RTC's provision of concessions on interest rates and price?

3. Financing of Sale

The Strategic Plan does not at this time permit the use of direct subsidies by the RTC for the marketing of eligible properties. The Oversight Board will carefully monitor the RTC's marketing efforts to determine the degree to which FIRREA's affordable housing objectives are achieved. If the Board determines the right-of-first-refusal period is not meeting the housing objectives of FIRREA, the Oversight Board will determine the appropriate form of subsidies and the total amount of subsidy.

4. Bulk Sales

The RTC provisions authorize the sale of properties in bulk. A strong argument was made during conference that bulk sales will increase the number of units reserved for low and moderate income families.

What are your general views on the efficacy of bulk sales? What administrative and regulatory steps will be taken to encourage such sales?

4. Bulk Sales

Bulk sales may be an effective method of disposing of assets and meeting affordable housing objectives. The Strategic Plan provides that the RTC should consider selling eligible properties in bulk to capable non-profit organizations and state and local housing finance agencies. The reduction in transaction costs to the RTC resulting from a bulk sale may permit the RTC to sell properties at a below-market price and still maximize net present value. The RTC should experiment with alternative methods of structuring bulk transactions. Under the Strategic Plan, the RTC by March 30, 1990, must establish guidelines for determining when eligible properties should be sold individually or in bulk, including an evaluation of the savings on disposition costs that may justify price discounts on bulk sales.

5. Coordination with Affordable Housing Program

Title VII established a cash advance program to reinforce the Federal Home Loan Banks' role in supplying mortgage credit and other related assistance for low and moderate income families. Cash advance funds can be used to assist purchasers of RTC properties.

How do you plan to coordinate the RTC property disposition program with the affordable housing cash advance program?

5. Coordination with Federal Housing Finance Board

The Strategic Plan states that the RTC should work closely with the Federal Housing Finance Board as the Finance Board designs its Affordable Housing Program to maximize the mutual effectiveness of the RTC's and the Finance Board's programs. Under the provisions of FIRREA, the Finance Board may act as a clearinghouse for the RTC to help facilitate RTC's disposition of eligible properties. Also, the Finance Board is authorized by FIRREA to provide subsidized interest rates on advances to member savings institutions for low- and moderate-income housing. This program should assist low-income housing groups and individuals as well as other organizations in acquiring RTC properties.

RTC/Affirmative Action

Under Title XII, the RTC is required to establish a minority outreach program to ensure the inclusion of minorities and women in contracts entered into by the agency.

What progress has been made toward establishing an outreach program? How do you plan to include minorities and women in the appraisal process? Investment banking? Legal Services? Underwriting services?

6. RTC - Minority Outreach Program

The Strategic Plan requires that by January 31, 1990, the RTC develop and present to the Board for approval a minority and women outreach program for RTC contracting. The Strategic Plan states that such a program should, at a minimum, include a definition of what constitutes an eligible individual or firm; a process for identifying and certifying eligible minority and women contractors; active promotion of the outreach program to eligible individuals and firms; and the development of an ongoing monitoring mechanism to allow evaluation of the RTC's performance under the outreach program.

The Strategic Plan provides that the RTC's evaluation criteria for selecting among qualified potential contractors should include a technical factor reflecting whether the offeror is an eligible entity or a firm contracting with an eligible entity. The Strategic Plan also provides that the RTC's outreach program should allow up to a 3% price advantage for eligible entities bidding for RTC contracts.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

January 16, 1990

Honorable Donald W. Riegle, Jr.
Chairman, Committee on Banking,
Housing and Urban Affairs
Dirksen Senate Building
Room 534
Washington, DC 20510

Dear Mr. Chairman:

I am writing to respond to questions which you submitted to me for the record after the October 4, 1989 hearing on the Resolution Trust Corporation (RTC) before the Senate Committee on Banking, Housing and Urban Affairs. Enclosed is a copy of the questions and responses pertaining to the Federal Housing Finance Board. The RTC Oversight Board will provide our responses to Senator Cranston's questions, identical sets of which were directed both to me and to Secretary Brady.

I hope that the information provided is helpful to the members of the Committee.

Very sincerely yours,

Jack Kemp

Enclosure

Response to Questions for the Record on the October 4 Hearing
Submitted by Senator Donald W. Riegle, Jr., Chairman,
Committee on Banking, Housing and Urban Affairs to
Jack Kemp, Secretary of Housing and Urban Development

1. What is the Administration's timetable for the submission to this Committee of nominees for the four vacant directorships on the Federal Housing Finance Board (FHFB)?

   I have discussed possible candidates with the White House. While there is no firm target date for these nominations, both the White House and I hope to have these directors in place as soon as possible. While each nominee must go through an extensive clearance process, we hope to forward the nominations early next year.

2. Pending confirmation of those four appointed directors, what actions will you take to employ and organize the personnel necessary to carry out the functions and duties of the FHFB? To the extent that the FHFB presently lacks sufficient personnel, what is your timetable for hiring staff?

   In late September, I appointed Mary Bush as Managing Director of the FHFB. Ms. Bush has extensive experience both in government and in the private sector, having served at the Department of the Treasury, the International Monetary Fund and as Vice President for International Affairs at Fannie Mae. Since her appointment, Ms. Bush has assisted me in all the organizational decisions involved in the start-up of the FHFB. This includes the transfer of approximately 40 employees from the former Federal Home Loan Bank Board pursuant to Chapter IV of FIRREA. Ms. Bush and I are actively engaged in the recruitment process for the 8-10 other officials who will round out the management structure of the FHFB.

3. Until such time that the appointed directors are confirmed and the FHFB is fully staffed, will the FHFB find it necessary to issue any regulations? If so, what areas would be addressed by such regulations? Would those interim regulations be revisited by the FHFB at such time that a full slate of directors is confirmed by the Senate?

   As Secretary of Housing and Urban Development, FIRREA vests me with the full powers of the FHFB until such time as at least two other directors are appointed and confirmed.

Accordingly, we are proceeding with all of the Board's functions and activities, including the promulgation of regulations. The Board already has promulgated regulations addressing such organizational matters as thrift assessments, Federal Home Loan Bank director selection process and Financing Corporation operations. The Board has various other regulations in process, including those involving the Affordable Housing Program. The full slate of directors will have the authority to revisit regulations at any time, whether or not they are issued as interim regulations.

RTC
Resolution Trust Corporation

November 16, 1989

Dear Mr. Chairman:

Thank you for your letter of October 12 forwarding additional questions in connection with the hearing held on October 4.

We are pleased to enclose responses to your questions and the questions of Senators Graham and Cranston for inclusion in the record of the hearing.

We hope this information is useful. Please let us know if we can be of further assistance.

With best wishes.

Sincerely,

L. William Seidman
Chairman

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, D. C. 20510

Enclosure

cc: Senators Graham and Cranston

RTC RESPONSES TO QUESTIONS FROM CHAIRMAN RIEGLE IN CONNECTION WITH THE OCTOBER 4, 1989, HEARING BEFORE THE SENATE BANKING COMMITTEE

1. The interim conflict of interest rules adopted by the RTC do not prohibit an RTC employee or contractor from selling an asset or a thrift on December 1 and then going to work for the purchaser on December 2. Will the RTC require any type of post-employment restrictions for contractors or RTC employees? If so, do you think a 1 year cooling off period should be required to solve the potential revolving door problem? Will there be any limit on the compensation of independent contractors used by the RTC?

ANSWER: The RTC's interim conflict of interest rules do not impose a post-employment restriction, as such, on independent contractors to the RTC. Under FIRREA, the RTC has been charged with the obligation to utilize the private sector to the maximum extent possible. To meet the dual needs of fiscal integrity and contractual flexibility, the RTC's interim rules do, however, prohibit an independent contractor from, for example, representing someone before the RTC concerning a specific insured institution for which the contractor had been engaged to advise on a general course of action involving that same institution. As for the compensation of its independent contractors, the RTC will be designing an incentive and fee structure, in accordance with standards to be fixed by the Oversight Board and its proposed strategic plan, which will presumably link pay and performance within the constraints of the RTC's conflict of interest rules.

The RTC's interim rules impose post-employment restrictions on former RTC employees. These rules propose to extend the restrictions of Title 18 and 5 CFR 737 to include aiding and assisting on a particular matter in which the former employee was personally and substantially involved, and may limit participation in matters involving the former employing office for a period of up to one year. The post-employment rules of the RTC, as currently proposed, will also include the disqualification of the firm, partner or associate of any person disqualified as to particular matters in which the former employee participated personally and substantially, unless a waiver is granted. Such a waiver will be granted upon receipt of evidence satisfactory to the RTC that appropriate screening measures are in effect.

The RTC's regulations concerning the conduct of the RTC's independent contractors are expected to be published shortly for public comment with the final regulations to be set in accordance with standards fixed by the Oversight Board.

2. It is my understanding that the RTC has no rules requiring contractors to disclose what they pay to consultants or advisers in order to lobby for the awarding of RTC contracts. What is your response to the recommendation that those persons attempting to get RTC business have to file a publicly available disclosure statement which indicates whether they paid anyone a fee to obtain RTC business, and the amount of any such fee?

ANSWER: Pending final determination of standards by the Oversight Board, the RTC proposes to disallow payment of any consultant fees contingent upon obtaining a contract with the RTC. Competing contractors will be asked to provide information to the RTC relative to any obligations contingent upon obtaining the contract. This appears to be a more stringent requirement than public disclosure of such fees as it imposes a prohibition on payment.

3. The Oversight Board has adopted a policy requiring coordination of federal enterprises that are involved in marketing real property. Should the RTC coordinate screening of independent contractors? What measures will you support to ensure, for example, that someone who has defaulted on a GNMA servicing contract will be barred from acting on behalf of the RTC?

ANSWER: We plan to screen applicants through a three phase process. This will include reviewing applicants for adherence to ethical standards; competency to perform work; and a competitive bid process. We will certify prior work performed, such as defaulting on GNMA servicing contracts, in order to prevent awarding future contracts to such contractors.

Contractor screening will be coordinated throughout the RTC. Each regional office will have access to the debarred contractors listings maintained by the General Services Administration on an on-line basis.

Various Executive Orders require agencies to report the names of entities who are barred from doing business with the Government on both procurement and participation contracts. The GSA provides this information to subscribers to this service as well as on an on-line computer system. The RTC has taken steps to provide the on-line services as well as the subscription service to its various regional offices as well as its headquarters office. It will be the internal policy of the agency not to contract with debarred contractors and require certification that the contractor is not otherwise barred from conducting business with the Government.

4. In the states that have laws giving depositors preference over general unsecured creditors in thrift liquidations is the RTC making certain that its loans to thrifts are fully secured? What written confirmation does the RTC provide the Oversight Board that such loans are fully secured? What procedures does the RTC follow to adequately value collateral?

ANSWER: The RTC requires that its funding to thrifts in its conservatorship program are secured to the extent assets in the conservatorships are available. In no way has our position ever worsened as a result of our funding operations. It is important to remember that funding goes to replace fully secured or insured funds. Copies of the funding agreements are sent to the Oversight Board (see Attachment A). In valuing all assets of the institutions in the conservatorship program, the Oversight Board's proposed strategic plan anticipates reliance on asset evaluations, prepared by private contractors at the direction and supervision of RTC staff, as well as the judgment of the Managing Agent.

5. Do you think a borrower from a thrift or an independent contractor associated with a thrift who caused a loss of a half million dollars or more at a federally sponsored or federally insured entity should be allowed to bid on RTC contracts just because they have not been convicted of a crime, or removed from the banking industry by a consent decree? What will you do to prevent such people from getting contracts with the RTC?

ANSWER: FIRREA establishes four standards which at a minimum, would require certification by prospective independent contractors and would preclude the engagement of a particular

contractor. These standards encompass conviction of a crime, removal from the banking industry by a decree, demonstration of a pattern or practice of defalcation regarding obligations to insured depository institutions, or causing a substantial loss to the Federal deposit insurance funds. The loss of $500,000 would presumably, depending upon the facts and circumstances of the loss, require scrutiny by the RTC under the fourth standard set forth in FIRREA. Indeed, the RTC anticipates, pending final action by the Oversight Board, a substantial loss threshold at an amount significantly lower than $500,000.

The RTC will collect such information as necessary to determine the competence, experience, integrity, and fitness of independent contractors. The certification anticipated in this regard is subject to the provisions of title 18, section 1001.

6. It is my understanding that the RTC has, in some instances, limited acquirors to a two day period to finish due diligence examinations of failed thrifts. I have further been informed that under the proposed resolutions of the five large insolvent thrifts the government will retain risk of loss associated with the bad assets at those thrifts. How do you respond to those who say the RTC should give acquirors a longer due diligence period before the thrift is sold and then transfer the risk of loss on the bad assets to the acquirors?

ANSWER: In marketing a thrift, the RTC places few restrictions on the amount of time a potential bidder may spend in the institution performing his due diligence. However, in cases in which the institution is not currently being marketed the RTC does allow a limited due diligence allowing two people two days for institutions with assets of less than $500 million or three people three days for institutions with assets of more than $500 million. The only purpose of this limited due diligence is to let potential bidders see if they would be interested in performing a full scale due diligence and perhaps bidding on the institutions when they are ultimately marketed (see Attachment B for background information).

Generally, the time allowed for due diligence is commensurate with the needs of the bidders. In instances where the institution has few troubled assets or where the bulk of the troubled assets will be retained by the receiver (e.g., "clean thrift" transactions), the time needed to complete a satisfactory due diligence can be quite short. Insured deposit transfers such as those previously completed on small thrifts

require only that the core deposit base be checked. In those cases no real due diligence is required, and a shorter time period was given. By contrast, more complex situations, particularly where the acquiror would retain higher volumes of troubled assets (e.g., "whole thrift" transaction) typically require an extention of the time allowed for due diligence, often four to six weeks, depending upon the situation.

The RTC presently anticipates that if market interest and conditions so warrant, additional "whole thrift" institutions will be offered for sale or offered as a potential alternative to "clean thrift" institutions. Under such circumstances, the time allowed for due diligence would more closely correspond with the four to six weeks presently allowed for "whole thrift" transactions.

7. Does the "clean bank" method of selling a failed thrift allow the RTC to defer the ultimate cost of selling a thrift compared to a "whole bank" transfer where the risks associated with the bad assets are transferred to the private sector?

ANSWER: No, in a clean bank transaction all of the monies to be disbursed by the parties are paid, while cash receipts to be realized from the sale of some of the institution's assets are deferred. In most cases assets are either extremely difficult to value and would be deeply discounted by a bidder or they have contingent liabilities associated with them. In either case, it makes it very difficult to market the association, and the RTC generally is better off selling the institution without them.

The related and more complex issue is the determination of which assets potential acquirors will be required to purchase. Generally our policy will be to restore ownership and/or management of such assets to the private sector as soon as reasonably feasible at an acceptable cost. Since virtually all financial institutions have some sort of "workout" department, they are typically willing to purchase troubled assets if they have the financial and managerial capacity, and if the value of such assets is reasonably determinable. Thus, in cases where asset deterioration has been relatively moderate, we will generally be able to effect "whole bank" transactions.

Unfortunately, in most of the associations in conservatorship, the deterioration in asset quality has been substantial. Not only is the volume of troubled assets high, but their underlying value is highly uncertain, if not downright speculative. Many

of these assets are raw land or incomplete or unleased projects in depressed markets, title is uncertain or clouded, or substantial litigation surrounds the asset. In such cases, the ultimate value of the assets is highly uncertain and could range from 100% to nothing or even to an actual loss (e.g. liability for an environmental hazard). Financial institutions are justifiably hesitant to bid on such assets at any price (indeed under any other circumstance they would typically be precluded from acquiring these assets).

Even in cases where the value of troubled assets can be established with a reasonable tolerance for error, the sheer volume of these assets can be enough to inhibit a reasonable bid from a financial institution. At levels beyond acceptable norms, the value to an acquiring institution of troubled assets is often less than their true economic value. In such situations bid prices, as evidenced by the incorporated risk premiums, reflect the value of the troubled assets to a particular acquiror rather than their true economic worth and may, in this respect, represent the acquiror's estimate ofthe potential losses on the assets. A bid process that required a "whole bank" purchase would thus fuel asset sales at less than their true economic value.

While "whole thrift" transactions will be attempted, where acceptable "whole thrift" bids cannot be produced, assets will be retained by the receiver while alternative methods of disposal are arranged. This could involve bulk or individual asset sales to non-financial institutions, foreclosure, and other appropriate steps to minimize the cost to the RTC. Although these methods are generally utilized presently by the FDIC in its failed bank asset disposition, the RTC contemplates, consistent with FIRREA and the Oversight Board's proposed strategic plan, employment of these methods by independent contractors operating at the direction of RTC staff.

While in some sense this could be viewed as "deferring the ultimate cost of selling a thrift," a more realistic interpretation is that it is avoiding an "excess" cost to a transaction by not requiring an unwilling or inappropriate buyer to bid on assets that he does not want or is not in a position to own. In short, the resolution process will match willing acquirors with what they want by selling thrift franchises to those interested in running financial institutions and the troubled assets to others who are better suited to bid aggressively on these assets. Where the asset deterioration has

not yet been too substantial, the whole bank transaction is likely to be the most efficient resolution; as the volume and complexity of troubled assets increases, the trade-offs switch and the modified whole bank or clean bank disposition is more likely to become the more cost effective solution.

8. With 3000 liquidators, the FDIC sold $250 million of real estate in 1988. NCNB, which acquired a failed Texas bank from the FDIC, has its crack team of over 1000 liquidators and was able to sell $500 million of real estate in one year. If RTC must dispose of $100 billion in real estate, even at NCNB's private sector rate of productivity, it would take 50 years for 4,000 people to sell that much land. What is your current estimate as to the number of both employees and independent contractors that will be used by the RTC? How does the RTC intend to increase the rate of asset sales above the rate currently achieved by the FDIC?

ANSWER: We would like to clarify that in 1988 the FDIC Division of Liquidation had total cash collections of $2.3 billion. Real estate collections totaled $250 million out of average holdings of $450 million. They thus disposed of over half of their total average holdings of real estate in one year. It should also be noted that the great majority of the 3000 liquidation personnel were devoted to collecting on problem loans, and were not involved in the sales of assets. With respect to NCNB, it should be noted that they were managing a portfolio much larger than the $500 million they sold. Similarly, during the last twelve months NCNB had total cash collections much greater than $500 million.

We would like to make clear that the current volume of real estate in our portfolio is only $3 billion. This level is predicted to increase significantly as 262 thrifts in conservatorship are resolved. We cannot accurately predict the number of employees and contractors but we are committed to utilize the expertise of private contractors and to develop incentive programs capitalizing on the innovation and flexibility available in the private sector. Nevertheless, we believe that an RTC staff of several thousand employees is not unrealistic. It should be noted that the great majority of these employees will be temporary hires under our Liquidation Graded hiring authority. This will prevent a large permanent Federal bureaucracy from remaining when the RTC work is completed.

As for an incentive program for independent contractors, RTC will structure, in accordance with standards to be fixed by the Oversight Board and its proposed strategic plan, contractor incentives so that the objectives of the RTC (maximization of net present value) and the contractor coincide without sacrificing the integrity of its contracts process. This will presumably be achieved by implementing an incentive structure that rewards the contractor for achieving higher returns for the RTC. For example, the RTC could employ a fee structure that allows the contractor to share increasingly in any returns that come from achieving sales prices above a pre-specified minimum level rather than a fixed fee structure (e.g., 6 percent of total sales price). To the extent possible, RTC would employ the same concept in devising incentive and fee structures for property managers, loan managers, and the like.

9. Some have questioned the ability of the real estate market to absorb the amount of sales that will be occasioned by the proposed capital gains amendment and the RTC asset disposal activity. Has the RTC obtained a professional opinion regarding the probable effect of the capital gains tax reduction in the House Revenue Reconciliation bill upon the principal real estate markets in which RTC is likely to acquire assets and the possibility or probability of increased losses to the RTC due to such tax reduction? If so, what is that opinion? If not, what will the RTC do to determine the impact of the capital gains proposal on its activities?

ANSWER: Given the present status before the Congress of the proposed capital gains tax reduction, the RTC has not obtained an outside opinion regarding the probable effect of a capital gains tax reduction bill upon the real estate market in which the RTC is operating. Unquestionably, the proposed two year window in which the bill was structured was designed to increase the turnover of real estate containing significant amounts of capital gain. We plan to conduct, if and when such a reduction is passed, further analyses of competing markets and investor attitudes to see what, if any, impact the bill will have on RTC costs. These analyses will be shared with you and the Congress if and when they are completed.

10. What is the probable timing of the resolution of the thrift institutions presently in the custody of RTC as conservator? What economic, administrative or other factors support the RTC's expectation that this schedule is achievable?

ANSWER: Our most optimistic view would be to resolve all thrifts presently in our conservatorship program by the end of 1990. The resolution process may take considerably longer depending on such variables as availability of funds, working capital limitations, and unforeseen administrative, legal, economic, or policy-related problems.

It is impossible to forecast exactly how many thrifts will end up in the conservatorship program and require resolution. Factors that could help determine the final number include general economic conditions in the next few years, the ability of borderline thrifts to raise necessary capital, and the ability of management to cope with both changes in the marketplace and new requirements mandated by FIRREA. The OTS is in a better position than the RTC to determine what that final total number of thrifts coming into the conservatorship program might be.

RESPONSES TO QUESTIONS FROM SENATOR BOB GRAHAM

1. Money: one of my overriding concerns during the markup of the S&L bill was that we were not supplying the RTC with enough money to handle the S&L problem. On page 10 of Chairman Seidman's testimony (paragraph 4, next to last sentence), he says "The RTC may be required to handle nearly 600 failures during the next three years with combined assets exceeding $300 B (book value)." Do you still believe you have the capability, with the amount of money we have given you, to handle the problem?

If it ever gets to that point, we would like for you to come to us and tell us of your concerns.

ANSWER: As stated in our testimony, it is too early to tell whether the $50 billion will be sufficient. The losses in most thrifts continue to grow until resolutions can be done. We will need much more money as working capital or interim financing to promptly resolve all the thrifts in or coming into the conservatorship program. Without working capital the cost will continue to get larger, and thus further strain the $50 billion workout limit.

Should the $50 billion prove inadequate, we would immediately express our concerns to Congress.

2. Monitoring Money: What kind of monitors should the Congress put in place to make sure an underestimation of the need for assistance does not occur again?

ANSWER: Given that most of the losses are already in the thrift system, past losses can only be minimized. Time will determine whether we have underestimated the past cost. With respect to potential future problems, the most important perspective is to work to make sure factors that caused the present problem are not allowed to recur. Strong supervision, as discussed in the testimony, is the first line of defense against having to worry about estimating losses stemming from future problems.

3. High interest rates: Chairman Seidman, on page 8 of your testimony and on page 11 of Secretary Brady's you both discuss that with the new RTC funding, the high cost of money has come down and is not being used to compete unfairly with healthy institutions.

Florida has been a victim of this problem as I mentioned to Director Wall in February and as I have written to Chairman Seidman. We have seen rates falling in Florida and our financial institutions are in a more competitive position. I commend you and your actions in this regard.

ANSWER: No response necessary.

4. Override of state laws: Mr. Seidman, please comment on why you believe you need the authority to override state laws in certain areas? I would appreciate a brief discussion of your policy position as I have a copy of your Board of Directors memorandum dated September 26 to the Board of Directors of the RTC from David Cooke and John Douglas. Does this memo fall within the Administrative Procedures Act? Will this policy decision be put out for public comment? If the public does want to comment, who do they contact and what is the process?

ANSWER: Your question relates to the provisions of FIRREA regarding state law "override" in the course of failing thrift acquisitions. These are the provisions to be codified at 12 USC section 1823 (k).

These provisions are important to the successful operation of the RTC's resolution process. Without this authority, the field of bidders for many of the failing thrifts within the RTC's jurisdiction would be severely limited. We would also lose a significant amount of flexibility in structuring transactions. For example, the law in some states specifically provides that a bank may acquire a failing bank under emergency provisions. Often there is no mention of acquiring failing thrifts because this was not really contemplated. Likewise banks have more restrictive branching rights than thrifts in certain states. If the RTC could not "override" these types of restrictions, banks would be effectively eliminated from the bidding or institutions would have to be sold in pieces, regardless of whether it made sense for the specific transactions involved. We have concluded that, in general, we will only override those state laws that would restrict acquisition and retention of the existing assets and facilities of a failed thrift by a successful bidder.

If as part of a RTC transaction a bank acquires a branch it could not otherwise acquire under state law, it only gets that branch, not the right to further branch except as allowed by state law.

Absent this authority the resolution costs for these failing institutions would be greatly increased. In many instances, banks could not bid. Outside investors not interested in acquiring a thrift charter would also be precluded. Thrifts are under pressure to raise capital and limited participation may be expected from them in many instances. All in all the universe of bidders would be greatly reduced and costs would go up.

The September 26, 1989, memo which you referred to does not fall within the Administrative Procedures Act. The memo itself was a recommendation to the RTC Board. The Board's ultimate action was a delegation of authority to Mr. Cooke and Mr. Douglas to exercise the Board's statutory authority under certain limited circumstances. The delegation does not constitute any final action as the exercise of the authority is done on a case by case basis dependent upon the specific facts and circumstances present.

We have discussed the general question of state law overrides with various state authorities. We further anticipate, as indicated in the proposed strategic plan presently pending public comment through publication in the Federal Register, significant local input from both national and regional advisory

boards on this and other matters. The boards will bring local expertise and concerns to the attention of the RTC and the Oversight Board and will provide a means for the RTC and Oversight Board to improve public understanding of the RTC's activities.

5. Question addressed to Secretary Brady, no response required from RTC.

RESPONSES TO QUESTIONS FROM SENATOR ALAN CRANSTON

Disposition Rules for Residential Property

1. Affordable Housing Objectives

What assurances can you give the Committee that the affordable housing objectives will be met through the disposition process? What are the various administrative and regulatory steps which must be taken before a fully operating disposition program is put into effect? How long will such actions take?

ANSWER: A Program Director - Low Income Housing position has been advertised and should be filled by late November. We currently have an Assistant Program Coordinator for Low Income Housing and plan to fill comparable positions in all regional offices and consolidated sites. As envisioned by the proposed strategic plan issued by the Oversight Board, we will establish, no later than March 30, 1990, guidelines for functions to be performed by non-profit organizations and housing financing agencies acting as clearinghouses and develop strategies to ensure the effective and efficient disbursal of information by the clearinghouse.

2. "First Look"

What is the schedule for implementing the "first look" requirement in an efficient and timely fashion? To what extent have you consulted with various clearinghouses designated in the law?

ANSWER: We are developing written guidelines to assure that adequate information and access to properties is made available to clearinghouses and eligible buyers on a timely basis. These guidelines and procedures will be submitted to the Oversight Board by March 30, 1990. Also see answer to number 3 below.

3. Financing of Sale

Has the Oversight Board discussed the extent to which any of these tools will be utilized? What factors will influence RTC's use of seller financing? What will influence RTC's provisions of concessions on interest rates and price?

ANSWER: We have consulted with various state housing agencies, including those in California, New Mexico, and Texas regarding seller financing. We have also held discussions with officials of the National Council of State Housing Agencies. Our discussions include the role of clearinghouses, financing alternatives, and bulk marketing strategies. As reflected in the strategic plan, we will provide issues and alternatives regarding financing the purchase of low and moderate income housing by March 30, 1990 for review by the Oversight Board.

4. Bulk Sales

What are your general views on the efficacy of bulk sales? What administrative and regulatory steps will be taken to encourage such sales?

ANSWER: Bulk sales maximize value by reducing administrative costs and allowing prompt sales. We plan to establish guidelines for determining whether eligible properties should be sold individually or in bulk, including an evaluation of savings on disposition costs that may justify price discounts on bulk sales. Also, we are meeting and discussing bulk sale alternatives with housing finance agencies and national nonprofit associations.

5. Coordination with Affordable Housing Program

How do you plan to coordinate the RTC property disposition with the affordable housing cash advance program?

ANSWER: In addition to the steps outlined in question 3, we plan to consult with the national and regional advisory boards about strategies for meeting the low-income housing goal. We will also consult with the Federal Housing Finance Board about methods for coordinating, to the extent practical, the affordable housing program and the community reinvestment programs. We are in the process of setting up an interagency group with our first meeting to be scheduled in the next few weeks.

6. RTC/Affirmative Action

What progress has been made toward establishing an outreach program? How do you plan to include minorities and women in the appraisal process? Investment banking? Legal services? Underwriting services?

ANSWER: The RTC is presently working with the Oversight Board on an outreach program. The RTC expects to announce shortly an interim Minority and Women Outreach Program for Asset Management and Disposition Contracting. The outreach program will ensure that firms owned by minorities and women are given the opportunity to participate fully in all contracting activities for goods and services required to manage and dispose of assets acquired from failed institutions. These contracts typically will cover services such as asset management, accounting services, appraisals, property management, information systems and the like, but may also include investment banking and underwriting services.

Legal services to be performed for the RTC will be contracted for by the FDIC Legal Division. The FDIC Legal Division has an aggressive outreach program. Under this program, the FDIC has joined the American Bar Association's Minority Demonstration Project. In fact FDIC was the first government agency to participate in this project and has received much recognition for this affirmative action. This project brings together corporations which wish to do business with minorities and minority law firms. The Project also attempts to direct more work to minority attorneys in majority firms, thus bringing more visibility to minority attorneys. It appears that these efforts encourage firms to hire more minorities. Since joining this project in early 1989, the FDIC has hired seven new minority firms and recommended for hire twenty-three additional firms.

ATTACHMENT A

RESOLUTION TRUST CORPORATION

RTC LENDING CIRCULAR NO. 1
August 11, 1989

LIQUIDITY ADVANCES AND DISCOUNTS

To All Depository Institutions formerly insured by the Federal Savings and Loan Insurance Corporation and placed in conservatorship or receivership after December 31, 1988:

GENERAL

1. This Lending Circular sets forth the general terms under which the Resolution Trust Corporation (the "RTC") extends credit to a depository institution[1] (the "Borrower") and the procedures to be followed in connection with an extension of credit.

AGREEMENT TO BE BOUND BY THIS LENDING CIRCULAR

2. By applying to the RTC for an advance or discount, the Borrower agrees to all of the terms and conditions set forth in

[1]A "depository institution" is a savings association or other depository institution as that term is defined in Section 204(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRREA") and which the RTC is authorized to manage or resolve pursuant to Section 501(b)(3) of the FIRREA.

this Lending Circular and its relevant Appendices and Exhibits, each as amended from time to time.

CREDIT AVAILABLE TO INSTITUTIONS

3. Advances made are repayable on demand. The RTC is authorized to extend credit to meet emergency liquidity needs of and to replace high cost funds at any depository institution within its jurisdiction and to make advances to the receiver or conservator of any depository institution within its jurisdiction. Credit extended by the RTC usually takes the form of an advance, but the RTC may, in its discretion, discount eligible paper or place a second deposit with a depository institution.

4. The purposes for which a loan may be made by the RTC to a depository institution for emergency liquidity needs include:

(a) excessive or unanticipated withdrawals;

(b) operating expenses of the depository institution;

(c) meeting existing commitments of the depository institution; or

(d) meeting legitimate needs in the depository institution's local community where meeting such needs is essential to maintaining the value of the depository institution.

5. Advances will be made by RTC for the purpose of replacing high cost funds in conformity with the following tests:

(a) deposits placed by RTC generally should be in institutions located in states with depositor preference statutes;

(b) any loans, other than deposits, to replace high cost deposits will be secured to the extent practicable by the assets of the institution;

(c) any loans or deposits made by RTC to replace brokered funds or high cost deposits will generally be at institutions with a large volume of brokered deposits;

(d) the RTC will generally provide brokered funds replacement in conservatorships only for an institution's maturing liabilities.

6. The purposes for which the RTC will generally make advances to a receiver or conservator include:

(a) obtaining the release of collateral by a secured creditor;

(b) for other case resolution costs or expenses.

CONTINUING LENDING AND SECURITY AGREEMENT

7. The RTC makes an advance to a Borrower pursuant to the terms of the Continuing Lending and Security Agreement set forth in Appendix A to this RTC Lending Circular. An advance made pursuant to the Continuing Lending and Security Agreement is evidenced by the wire transfer that specifies the amount of the advance. Upon receipt of the advance the Borrower shall transmit an acknowledgement of receipt in form approved by the RTC to the RTC. The RTC reserves the right at any time to require the Borrower to execute a promissory note with respect to a particular advance or advances.

DOCUMENTS REQUIRED IN ORDER TO OBTAIN ADVANCES AND DISCOUNTS

8. Executed copies of the Exhibits to the relevant Appendices to this RTC Lending Circular must be on file with the RTC in order for the Borrower to obtain an advance. If a Borrower currently has a borrowing resolution or certification on file with the RTC, and if the form and content of that resolution or certification is substantially similar to the form and content of the relevant Exhibit to Appendix A then the Borrower need not file another resolution with the RTC unless specifically requested to do so.

APPLYING FOR CREDIT AND AVAILABILITY OF CREDIT

9. In general, a request for an advance need not be accompanied by a written application and may be made by telephone, letter, or wire by an authorized employee of the Borrower. However, prior to transferring advances to the Borrower the RTC requires that a written confirmation of request be received by the RTC. Each written request or confirmation of an oral request for an advance must specify the amount of the requested advance, the length of time accommodation may be needed, the collateral offered as security, and if the collateral is not already held by the RTC the manner in which the collateral will be placed in its possession, under its control, or otherwise pledged to the RTC.

10. Under normal conditions, including requests for the replacement of high cost funds, a request for credit should be received at the RTC's Washington office by 10:00 a.m. Eastern Time to provide sufficient time to process the request and wire the advance to the designated Federal Reserve account, Federal Home Loan Bank account, clearing account, or other approved account on the same day. In the event of unusual circumstances which may require later borrowing, including emergency liquidity needs, or if funds are not available from other sources, notice should be given to the RTC by 1:30 p.m. Eastern Time and the

credit facility will remain open to accommodate that need. If the Borrower does not maintain an account with a Federal Reserve Bank or a Federal Home Loan Bank, the amount of the advance may be transferred to the account of another institution designated by the Borrower subject to the terms and conditions of Appendix C to this Lending Circular.

INTEREST RATE

11. Interest on an advance is payable to the RTC at the time of repayment at the applicable rate, or rate plus surcharge, indicated in Appendix B to this Lending Circular in effect at the time the advance is made. However, if the interest rate is changed while the advance is outstanding, the new rate applies on and after the effective date of the change, unless the advance and all interest due with respect to it are repaid in full by the Borrower before the RTC's close of business on the effective date of the rate change, or before the RTC's close of business on the next business day for the Borrower if the effective date of the rate change is a holiday. Interest is computed on a basis of 365 days to the year.

12. If all or any portion of an advance remains unpaid after the date the advance is to be repaid, interest continues to accrue on the unpaid portion of the advance until the advance and

all interest due with respect to it are paid in full. AFTER THE ADVANCE IS DUE AND PAYABLE, OR UPON DEFAULT BY THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THE CONTINUING LENDING AND SECURITY AGREEMENT, AND AT THE SOLE DISCRETION OF THE RTC, A DEFAULT INTEREST RATE ON THE UNPAID PORTION OF THE ADVANCE MAY BE CHARGED FOR SUCH AN ADVANCE UNDER THIS LENDING CIRCULAR.

13. If the date the advance is to be repaid falls on a Saturday, Sunday, public holiday, or emergency public holiday so that repayment of the advance cannot be made, then interest on the advance continues to accrue at the rate in effect on the date it was to be repaid, provided that the advance is in fact repaid on the next day that is a business day for both the RTC and the Borrower.

14. NOTHING HEREIN SHALL BE CONSTRUED TO ALTER THE DEMAND NATURE OF THE ADVANCE. THE RTC MAY DEMAND PAYMENT AT ANY TIME AT ITS DISCRETION AND THE OBLIGATION FOR PRINCIPAL AND INTEREST SHALL BE IMMEDIATELY DUE AND OWING IN FULL UPON DEMAND.

COLLATERAL

15. In addition to meeting the requirements of the RTC's Continuing Lending and Security Agreement and any applicable custody agreement, collateral offered as security for any advance must be:

(a) acceptable to the RTC;

(b) endorsed or assigned to the RTC by the Borrower, (except in the case of negotiable bearer paper) in such manner or form as may be directed by RTC; and

(c) in such form, or accompanied by such documents, that it may be transferred readily to the RTC without further action by the Borrower.

16. In certain situations and only with the RTC's prior approval, collateral offered as security for an advance may be held by the Borrower itself, another depository institution, or other custodian acceptable to the RTC in lieu of actual delivery of the collateral to the RTC. These custody arrangements are subject to the terms set forth in Appendices D and E to this Lending Circular.

17. Securities issued by the United States and certain securities issued by agencies, instrumentalities and establishments of the United States ("Agencies") may be maintained by the RTC in book-entry form under such terms and pursuant to such instructions as may be determined from time to time by the RTC.

CONTINUING OBLIGATIONS OF THE BORROWER

18. A Borrower agrees that the RTC's rights, remedies, powers, security interests, and liens arising under any applicable Appendix to this Lending Circular continue unimpaired and that the Borrower remains obligated in accordance with the terms of the Appendix even if the RTC partially exercises any right or remedy, or substitutes or adds parties, or makes any compromise or grants an extension with respect to any obligation of the Borrower to the RTC on any promissory note, draft, document, or other instrument given in connection with such obligation. The Borrower waives all notice of any extension, release, substitution, renewal, or compromise, and consents to be bound thereby as fully and effectively as if the Borrower had agreed expressly to it.

STATEMENTS AND REPORTS

19. In connection with any advance or discount, the RTC reserves the right to require a current condition report of the Borrower, a recent balance sheet and profit-and-loss statement of any obligor on paper offered as collateral for the advance or discount, and such other reports and statements as the RTC may deem desirable.

REMEDIES

20. No remedy reserved to the RTC under any Appendix to this Lending Circular or otherwise is intended to be exclusive of other remedies, including remedies with respect to any note or other evidence of indebtedness. Each remedy is cumulative to other remedies agreed to by the Borrower or which may exist at law or in equity. Failure to exercise a right shall not be a waiver of that right or remedy or any other right or remedy.

SEVERABILITY

21. If any provision of this Lending Circular or any of its Appendices is held invalid or unenforceable, such invalidity or unenforceability does not affect any other provision of the Lending Circular or any Appendix.

TERMINATION

22. A Borrower may terminate its obligations under this Lending Circular by giving advance written notice to the RTC. However, the terms of this Lending Circular and each applicable Appendix to it remain in full force and effect and are binding upon any Borrower and the Borrower's legal representatives, successors, and assigns until all the obligations of the Borrower to the RTC, past, present or future, have been fully satisfied an

discharged. If all the obligations to the RTC are satisfied at any time, such terms of this Lending Circular and each applicable Appendix to it are equally applicable to any new obligations incurred by or in behalf of the Borrower until the RTC receives a written notice of termination. No notice of termination releases the Borrower or affects in any manner the RTC's rights, remedies, powers, security interests, or liens with respect to the collateral pledged to secure any of the obligations of the Borrower to the RTC arising prior to the RTC's actual receipt of such notice of termination.

AMENDMENTS

23. The RTC reserves the right to amend this Lending Circular and any Appendix, Exhibit or Supplement to it without notice at any time. Any amendment, other than a change in the interest rate, applies only to advances made after the effective date of the amendment.

William H. Roelle
Resolutions & Operations
Division

LC1.njs

8/11/89

SOLUTION TRUST CORPORATION

Appendix A
to RTC Lending Circular No. 1

AGREEMENT REGARDING ADVANCES BY THE RESOLUTION TRUST CORPORATION
("Continuing Lending and Security Agreement")

This appendix (the "Appendix") sets forth the terms of the agreement (the "Agreement") between the undersigned depository institution (the "Borrower") and the Resolution Trust Corporation (the "RTC") regarding advances by and pledges of assets to the RTC. To obtain an advance, a Borrower must execute and return to the RTC this Appendix A to RTC Lending Circular No. 1, a letter in the form set forth in Exhibit 1 to this Appendix, along with a certified copy of a certification substantially in the form contained in Exhibit 2 to this Appendix; and execute and return to the RTC Appendix D or E (if applicable) to RTC Lending Circular No. 1.

In consideration of the mutual covenants and promises herein set forth and other good and valuable consideration, the RTC and the Borrower agree as follows:

GENERAL

1. The Borrower acknowledges that the RTC is not obligated by this Agreement or otherwise to make advances to the Borrower and that when an advance is made, each advance is subject to all

the provisions of this Agreement, the RTC Lending Circular No. 1, and Policy Statements of the RTC or the RTC Oversight Board, each as amended from time to time.

ADVANCES

2. The amount of an advance is specified in a wire transfer from the RTC. Upon receipt of the advance, the Borrower shall transmit to the RTC an acknowledgement of receipt. The wire transfer constitutes evidence of the advance.

3. Unless otherwise agreed to by the RTC, each advance shall be made by wire transfer to the Borrower's deposit account at _____ (account No. _____).

REPAYMENT

4. (a) The Borrower promises to pay to the order of the RTC on demand the principal amount of each advance made to it by the RTC together with interest as provided in the RTC's Lending Circular No. 1 and any Appendix thereto. The Borrower waives presentment, notice of dishonor, protest, notice of protest and all other notices relating to any note executed by it at the request of the RTC as further evidence of an advance.

(b) The advice of credit may constitute a demand for repayment if the RTC so specifies in the advice.

(c) The Borrower agrees that if it has insufficient, immediately available and finally collected funds, the RTC shall have the right, by viture of its power of attorney, to draw directly on the Borrower's account (if any) with the Federal Reserve Bank or the Federal Home Loan Distrct Bank. The The Borrower shall consult with the RTC in advance and make arrangements satisfactory to the RTC in order to make full payment to the RTC from the Borrower's account of any advance and interest due thereon in immediately available and finally collected funds.

(d) The RTC may, at its sole discretion, apply any payments by or recovery from the Association, which shall be received by the RTC without any designation from the Association as to the intended application thereof, at such time and in such manner and order of priority as the RTC shall deem fit.

(e) All payments, including payments of principal and interest payable in respect of each loan shall be made in immediately available funds to the account of the RTC's United States Treasury account in Washington, D.C. If principal or interest is due and payable on a non-Business Day, payment will be considered timely if made on the first Business Day following the due date. For purposes of this Agreement, "Business Day" shall mean a day other than a Saturday, Sunday, Federal legal

holiday, legal holiday under the laws of the State in which the Borrower resides or a day on which the principal office of RTC is closed.

CREATION OF SECURITY INTEREST

5. In consideration of an advance that is made to the Borrower by the RTC the Borrower:

(a) Warrants that under applicable law, its charter and bylaws, it is authorized through appropriately delegated authority to obtain advances from the RTC and to grant the RTC a security interest in and a lien on any and all assets offered as collateral under this Agreement that is superior to any lien against those assets under any other agreement.

(b) Assigns, transfers and pledges to the RTC the collateral, of each and every kind, now or hereafter owned by the Borrower, as security for the repayment of the advance, together with interest thereon, and grants the RTC a security interest in the collateral and the proceeds of the collateral. The collateral and its proceeds are also pledged by the Borrower as security for all other liabilities of the Borrower due or to become due to the RTC, or which may be acquired by the RTC. If the Borrower is located in the State of Louisiana, the limit of

the total of all advances and other liabilities to be secured by such assignment and pledge shall be Five Hundred Million Dollars.

(c) Grants to the RTC a security interest in and assigns and pledges to the RTC all property (tangible and intangible) of the Borrower in the possession of the RTC, under the control of the RTC, or held for the RTC pursuant to a "borrower in custody" arrangement, including, but not limited to, items in process of collection and the proceeds thereof, and any balance to the credit of the Borrower with the RTC. The Borrower also assigns to the RTC and grants to the RTC a security interest in any and all records and documents concerning the collateral including, but not limited to, appraisals or opinions of value, title insurance policies (and the proceeds thereof), casualty insurance policies (and the proceeds thereof), abstracts, and records of repayments made.

(d) Authorizes the RTC to file or record such documents as the RTC deems necessary to perfect its security interest. If the RTC so demands, the Borrower shall reimburse the RTC for any expenses incurred by the RTC in perfecting its security interest in the collateral including, but not limited to, the cost of recording an assignment of mortgage, filing a financing statement, and obtaining a lien search. If the RTC so demands, the Borrower also shall reimburse the RTC for any expenses

incurred by the RTC in assembling, transporting, safekeeping or managing potential collateral or collateral pledged under this Agreement, whether the collateral is held by the RTC or by a third party custodian.

COLLATERAL MAINTENANCE REQUIREMENTS

6. In further consideration of the advance made to the Borrower by the RTC, the Borrower:

(a) Warrants that it has good title to the collateral and that it has not assigned, pledged, encumbered or transferred except as provided in this Agreement, and that it shall not assign, pledge, encumber, or transfer its security interest in, or create or suffer the creation of any lien against, or otherwise dispose of, any collateral whether or not it is subordinated to the RTC's security interest and lien without the RTC's prior written approval.

(b) Warrants that it has sufficient assets that are unpledged to any other person, whether under a general lien or pledge agreement or otherwise, to grant to the RTC the security interest created by this Agreement without violating the terms and conditions of any such lien or pledge agreement or applicable federal or state law.

(c) Warrants that it shall neither perform nor fail to perform any act with respect to the collateral that would impair the RTC's security interest in it.

(d) Agrees that it will not service the collateral or conduct its operations in an unsafe or unsound manner which would have a detrimental impact on the value of the collateral.

(e) Warrants that each item of collateral is negotiable or transferable and that each mortgage has been recorded in the Borrower's favor in proper form and in the proper place for recording interests in real property.

(f) Agrees, upon the request of the RTC, to substitute collateral and/or pledge such additional collateral as the RTC may deem necessary to adequately secure any advance.

(g) Agrees that it shall have sole responsibility for taking such steps as may be necessary to preserve all the rights of the RTC in the pledged collateral and that it shall execute such other agreements or documents as are necessary to grant and/or perfect the security interest given to the RTC in any collateral. The Borrower, further agrees to hold such collateral in trust for the RTC until the RTC's security interest is perfected under applicable law.

(h) From time to time, upon the request of the RTC, shall deliver to the RTC a Collateral Report specifying and

describing such amount of collateral pledged to the RTC under the Agreement that is equal in amount to such collateral maintenance level as may be required by the RTC from time to time. The format of the Report shall be in accordance with such reasonable requirements as may be specified by the RTC from time to time. Such Report shall not be effective until it is accepted by the RTC, which acceptance will be confirmed in writing.

(i) Shall give the RTC prompt notice of any and all dividends, interest payments and other payments received by the Borrower with regard to any collateral pledged to secure an advance made pursuant to this Agreement. The Borrower agrees that any such payments may be retained by the RTC and upon the RTC's request the Borrower shall remit the funds to the RTC.

(j) Agrees that the RTC may at any time or times hereafter inspect, copy, and require delivery of any and all records or documents in the possession of or under the control of the Borrower which concern any item of collateral including, but not limited to, appraisals or opinions of value, title insurance policies, abstracts, and records of repayments made.

(k) Shall execute, endorse, assign and deliver to the RTC at any time or times hereafter at the request of the RTC, all security agreements, financing statements, and any other agreements, instruments, and documents as the RTC may reasonably

request to protect and maintain the security interest granted by the Borrower to the RTC in the collateral with recourse to the Borrower, and the Borrower hereby waives presentment, demand, notice of dishonor, protest, and notice of protest, and all other notices relating thereto.

(l) May request of the RTC by written form acceptable to the RTC as set forth in Appendix F to RTC Lending Circular No. 1 (i) the withdrawal, substitution, reassignment or release from collateral in which the RTC has perfected a security interest under this Agreement, and (ii) a detailed listing of the collateral requested to be withdrawn, substituted, reassigned or released, (iii) a certificate of a duly authorized representative of the Borrower certifying that the release or reassignment would not cover the amount of collateral held by the Borrower for the benefit of the RTC to fall below such required collateral maintenance level as the RTC may establish from time to time. The RTC shall then promptly inform the Borrower of its decision as to whether to redeliver, release or reassign to the Association the collateral specified in said listing. Notwithstanding anything to the contrary herein contained, while an Event of Default as defined herein shall have occurred and be continuing, the RTC will not be required to consider any request for withdrawal or reassignment.

DEFAULT

6. (a) In the event of a default by the Borrower in the performance of any of its obligations under the terms of this Agreement or any other documents, instruments or agreements delivered or executed in connection with this Agreement including, but not limited to, RTC Lending Circular No. 1; or in the event the Borrower fails to repay any advance with interest when demanded; or in the event of the purchase, acquisition, merger or other takeover of the Borrower, in whole or in substantial part, by any other institution, other than any such action done with the prior knowledge and consent of the RTC; or in the event of credible evidence coming to the attention of the RTC that any representations, statements, or warranties made or furnished in any manner to the RTC by or on behalf of the Borrower in connection with any Advance was false in any material respect when made or furnished; or in the event of any suspension of payment by the Association to any creditor of sums due or the occurrence of any event that results in acceleration of the maturity, or demand for payment, of any indebtedness of the Association to others under any security agreement, indenture, loan agreement, or comparable undertaking; or in the event of an assignment by the Association or any subsidiary of the

Association for the benefit of creditors; or in the event the RTC reasonably and in good faith determines that a materially adverse change has occurred in the financial condition of the Association from the time of making of any Advance or from the condition of the Association as theretofore most recently disclosed to the RTC; or in the event the RTC reasonably and in good faith deems itself insecure even though the Association is not otherwise in default, the RTC or its assigns:

(1) shall have all the rights of a secured creditor under applicable law;

(2) at its sole option, may declare the underlying obligation of the Borrower including any fees and charges that are provided for under this Agreement to be immediately due and payable without presentment, demand, protest or any further notice; and

(3) shall have the right to set off the unpaid principal balance of any advance plus interest against any indebtedness of the RTC to the Borrower, whether or not due.

(b) The RTC may, in addition to any other available rights and remedies provided by applicable law, sell, assign and deliver all or any portion of the collateral at private or public sale free of all other claims, to the extent permitted by law,

for such price as the RTC deems appropriate without any liability for any loss due to a decrease in the market value of the collateral during the period held. In the case of any such sale, the Borrower waives notice of the time and place of the sale. The RTC shall have the right to purchase all or part of the collateral at any such sale. After deducting all expenses of the sale, the net proceeds from the sale of the collateral shall be applied against the amount(s) owed by the Borrower to the RTC, first to interest and then to principal, and any surplus then remaining from the proceeds of any sale or recovery upon the collateral shall be applied at the time and in such manner and order of priority that the RTC, in its sole discretion, may choose. The Borrower agrees to pay all costs and expenses of the RTC in the collection of the indebtedness and enforcement and preservation of the rights and remedies of the RTC in case of default by the Borrower, including without limitation reasonable attorney's fees. The RTC, at its discretion, may apply any surplus after payment of the indebtedness and all costs of collection and enforcement, to third parties claiming a security interest in the collateral junior to that of the RTC, with any remaining surplus paid to the Borrower. The Borrower shall be liable to the RTC for any deficiency remaining.

POWER OF ATTORNEY

7. The Borrower hereby appoints the RTC or its assigns as its Attorney In Fact and authorizes it to conduct the sale and to give such notices and execute and endorse such documents as are necessary to convey good title to the collateral to any purchaser. As such Attorney In Fact, the RTC may, at its option, take any lawful action to collect all sums due upon or in connection with the collateral and in case of full payment may release the instrument securing or evidencing such debts as fully as the Borrower could do if acting for itself. This power of attorney is coupled with an interest and full power of substitution is granted to the assignee or holder.

PREPAYMENT

8. Prepayment of an advance, or any part thereof, may be made by the Borrower without penalty upon the written approval of the RTC.

DISPOSITION OF COLLATERAL AFTER REPAYMENT

9. Any collateral pledged to secure repayment of a particular advance made to the RTC will, upon request of the Borrower, be released and returned to the Borrower when the advance, together with interest, has been repaid in full,

provided the Borrower is not then in default in repaying any other debt or obligation to the RTC.

MISCELLANEOUS

10. Waiver. The RTC, in writing, may waive any right, power or privilege under this Agreement or any note; provided, that neither the failure nor the delay of the RTC to insist upon strict performance of any of the terms of the Agreement or to seek to enforce the RTC's rights or remedies in the event of any default or breach shall be deemed a waiver of any rights, powers, privileges or remedies that the RTC may have, and shall not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

11. Security Agreement. This Agreement may be referred to as the "Continuing Lending and Security Agreement" and constitutes a "security agreement" in the event such an agreement is required under applicable state law.

12. Prior Agreements. This Agreement supersedes any prior continuing lending agreement regarding advances from the RTC, entered into by the Borrower.

13. Effective Date. This agreement shall become effective on the date that the RTC receives the executed letter and

certification from the Borrower in the format reflected in Exhibits 1 and 2 to this Appendix.

14. Statutes of Limitation. As to each advance, any applicable statute of limitation shall not begin to run until the date repayment is demanded by the RTC.

15. Successors and Assigns. This Agreement is binding upon the successors, assigns and legal representatives of the Borrower, and inures to the benefit of the RTC its successors and assigns.

16. Legal Fees. The Association agrees that, if any action or proceeding is brought by the Association seeking to obtain any legal or equitable relief against the RTC under or arising out of this Agreement or any transaction contemplated hereby, and such relief is not granted by the final decision, after any and all appeals, of a court of competent jurisdiction, the Association shall pay all attorney's fees and other costs incurred by the RTC in connection therewith.

17. Notices. Except as provided for in this Agreement, any notice, advice, request, consent, or direction given, made, or withdrawn pursuant to this Agreement shall be given in writing or by machine readable electronic transmission, and shall be deemed to have been duly given to and received by a party hereto two days after it shall have been mailed by certified or registered

mail. If notice is given by hand or by machine readable electronic transmission, notice shall be deemed to be duly given to a party when actually received by such party at the following address.

If to the Borrower:

If to the RTC:

Resolution Trust Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Director of Funding Operations

18. Captions and Headings. The captions and headings in this Agreement are for convenience only and shall not be considered a part of or a construction or interpretation of any provisions of this Agreement.

19. RTC's Signature Not Necessary. The Borrower acknowledges that this Agreement is and shall be effective upon execution by the Borrower and delivery to and acceptance hereof by the RTC, and it shall not be necessary for the RTC to execute or otherwise signify its express acceptance.

20. Modification. No amendment or other modification, recission, release, annulment or assignment of any part of this Agreement or the Note shall be effective except pursuant to a written agreement executed by the duly authorized representatives of the parties hereto.

21. Survival of Covenants, Representations and Warranties. The covenants, representations and warranties contained in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder and under any note.

22. GOVERNING LAW. THIS AGREEMENT AND THE NOTES, IF ANY, AND THE RIGHTS AND OBLIGATIONS HEREUNDER AND THEREUNDER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA OR LENDING CIRCULARS OF THE RTC AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW OR LENDING CIRCULARS OF THE RTC IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

TERMINATION

23. This Agreement may be terminated as provided in the RTC's Lending Circular No. 1.

IN WITNESS WHEREOF the undersigned duly authorized representative(s) of the Borrower have subscribed their names hereto and executed this Agreement and have affixed the corporate seal this ____ day of _____, 19___.

_____ _____
(Date) (Name of Borrower)

_____
(Address)

_____
(Authorized Signature) (Title)*

UNITED STATES OF AMERICA)
) SS
_____)

On this _____ day of _____, 1989, before me, Notary Public in and for the District of Columbia, personally appeared _____ _____ to me known personally, who being by me first duly sworn did depose that he is Regional Director (Liquidation) of the Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing certification of authority has been subscribed, and that the said certification of authority was subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and the said _____

acknowledged the said certification of authority to be the free act and deed of the said Corporation.

_____
Notary Public, District of Columbia
United States of America

*To be signed in accordance with the borrowing resolution or certification by the file at RTC.

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RESOLUTION TRUST CORPORATION DRAFT

Exhibit 1
to Appendix A
RTC Lending Circular No. 1

(Letterhead of Depository Institution)

LETTER OF AGREEMENT

(Date)

Resolution Trust Corporation
550 17th Street N.W.
Washington, D.C. 20429

Gentlemen:

In order to obtain advances and in consideration of your making such advances, we agree to be bound by the provisions of your RTC Lending Circular No. 1 and Appendix A and Appendix B to that Circular, as amended from time. We acknowledge that it is our responsibility to ensure that we have in our possession current copies of the Circular and Appendices.

Enclosed are copies of the corporate resolution or certification that you have requested.

_____
(Name of Association)

_____
(City, State)

By: _____
(Authorized Signature)*

_____
(Title)

*To be signed in accordance with the borrowing resolution or certification on file at the RTC.

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8/11/89

Exhibit 2
to Appendix A
RTC Lending Circular No. 1

CERTIFICATION OF AUTHORITY FOR A DEPOSITORY INSTITUTION TO OBTAIN ADVANCES FROM AND TO PLEDGE ASSETS TO THE RESOLUTION TRUST CORPORATION

By Resolution dated February 5, 1989, bearing Seal Number 45639 ("Resolution"), the Board of Directors of the Federal Deposit Insurance Corporation ("Corporation") authorized the Corporation to enter into an agreement (the "Management Agreement") with the Federal Home Loan Bank Board (the "FHLBB") and the Federal Savings and Loan Insurance Corporation (the "FSLIC") whereby the Corporation agreed to manage certain thrift conservatorships and/or receiverships pursuant to the terms set out therein. The Resolution also authorized the Chairman of the Board, or his designee, to execute and deliver or cause to be delivered any such other agreements and documents as may be necessary or advisable to carry out the terms of the transactions contemplated thereby, and appoint any agents, employees or attorneys, contract for other services, and take or cause to be taken any such other actions as may be necessary or advisable to carry out the terms of the Resolution and the Management Agreement and to effectuate the transactions contemplated thereby.

By delegation dated February 7, 1989, the Chairman of the Board designated his Deputy, David C. Cooke, to take all such action as may be necessary or advisable to carry out the terms and to effectuate the transactions contemplated by the Resolution and the Management Agreement.

By delegation dated February 13, 1989, all such authority was redelegated to William H. Roelle as the designated "Project Manager" for purposes of carrying out the Corporation's obligations and duties related to the undertakings evidenced by the Management Agreement.

By delegation dated August 1, 1989, William H. Roelle, S & L Project Manager delegated certain authority to _____, Regional Director (Division of Liquidation) of the _____ _____ Region for purposes for carrying out the Corporation's obligations and duties related to the undertakings evidenced by the Management Agreement. Such delegated authority included the authority to carry on the Association's business and to conserve and preserve the Association's assets and property, including the authority to borrow money in the name of the Association for any purpose, from any source, and in any amount, and

in any manner, and execute, acknowledge, and deliver evidence of indebtedness therefore and secure repayment thereof by mortgage, pledge, assignment in trust, or hypothecation of any property of the Association, provided that all actions taken pursuant to such authority must be consistent with the policies and procedures set forth in the S & L Project Manual.

By delegation dated _____, 1989, such authority was redelegated [in full] to the Managing Agent of _____. [Such authority was limited to _____.]

I hereby certify that _____ is the Managing Agent (the "Managing Agent") of

_____

(the "Institution"), a savings and loan association duly authorized and existing under the laws of _____, and as such has the authority:

1. On behalf of the Institution to apply for advances from and to pledge assets to the Resolution Trust Corporation, a corporate instrumentality, organized and existing under the laws of the United States of America and having its principal office in Washington, D.C. (the "RTC"); and

2. In the name and on behalf of the Institution and as its corporate act and deed to do any one or more or all of the following, to wit:

(a) To borrow money, and obtain loans and advances, from the RTC upon such terms and security as the RTC may require; and

(b) To discount, rediscount, or sell (with or without this Institution's agreement to repurchase), and for such purposes to endorse and assign notes, drafts, bills of exchange, acceptances, and such other bills receivable, evidences of indebtedness, and securities, now or hereafter acquired by this Institution, as the RTC may now or hereafter be willing to acquire; and

(c) To make, execute, and deliver such applications, notes, agreements (including any borrower-in-custody or third-party custody of collateral agreements), certificates, and other instruments as may be necessary or advisable in order to effect, or as may be required or requested by the RTC in connection with, any transaction authorized by this resolution; and

(d) To endorse, assign, deposit and pledge any property of this Institution whether now owned or hereafter acquired, to

the RTC as collateral security (including any collateral security pledged pursuant to any borrower-in-custody or third-party custody arrangement and the authorization to appoint any custodian or to act as custodian or to act as custodian in connection with such arrangements) to secure the payment or performance of any liability or obligation of the Institution to the RTC; and

(e) To do any and all acts and things that may be necessary or incidental to any transaction authorized by these resolutions, or that may be designed or intended to carry out the purposes of these resolutions.

These resolutions and all the powers and authorizations hereby granted or confirmed shall continue in full force and effect until written notice of the revocation thereof shall have been received by the RTC. A duly certified copy of these resolutions, with the seal of this Institution thereto attached, shall be furnished to the RTC.

Exhibit 2
to Appendix A
RTC Lending Circular No. 1

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 1989.

_____
(Regional Director)

UNITED STATES OF AMERICA)
) ss
_____)

On this _____ day of _____, 1989, before me, Notary Public in and for the District of Columbia, personally appeared _____ _____ to me known personally, who being by me first duly sworn did depose that he is Regional Director (Liquidation) of the Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing certification of authority has been subscribed, and that the said certification of authority was subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and the said _____ acknowledged the said certification of authority to be the free act and deed of the said Corporation.

_____
Notary Public, District of Columbia
United States of America

My Commission expires:_____

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RESOLUTION TRUST CORPORATION

Exhibit 8
to Appendix A
RTC Lending Circular No. 1

DEMAND PROMISSORY NOTE

$_____ _____19___
(Amount) (Date)

On demand, for value received, the undersigned depository institution (the "Borrower") promises to pay to the order of the Resolution Trust Corporation (the "RTC"), at its offices at 550 17th Street N.W., Washington, D.C., the principal sum of _____Dollars or such other lesser amount of indebtedness, howsoever evidenced or incurred hereafter from time to time owing by the Borrower to the RTC. The amounts reflected on the books and records of the RTC shall be presumptive evidence of the amount due and owing to it by the Borrower. The Borrower also promises to pay to the order of the RTC interest on the unpaid principal amount of each loan accruing from and including the date of such loan until such principal amount has been paid in full. The Borrower agrees that the initial interest rate for payment of interest on each loan shall be equal to (i) the average rate (equivalent coupon-issue yield) established at the auction for United States Treasury Bills with maturities of thirteen (13) weeks most recently preceding the date of any loan by the RTC to extend liquidity funding to an institution, plus (ii) _____ basis points (%). Thereafter, the interest rate for such loan shall be adjusted each Tuesday on a weekly basis for the period during which such loan is outstanding. Interest will be calculated on a simple interest basis using the actual number of days elapsed during each calendar year or portion thereof and a calendar year of 365 or 366 days, as applicable. Interest payments for interest accrued on such loan shall be due and payable on the same date that the principal payment is due and payable. Any change in such rate or rates will apply to all indebtedness covered by this Note as of the effective date of such change, without notice to Borrower. This Note evidences indebtedness, in any means whatsoever incurred or owing from time to time by the Borrower to the RTC, including but not limited to loans, advances and other extensions of credit resulting from or made pursuant to the Financial Institutions Recovery, Reform and Enforcement Act of 1989, and the policies of the RTC Oversight Board; overdrafts, debit balances and all extensions, renewals, refinancings, and consolidations of such indebtedness or liabilities.

All sums due under this Note and all other indebtedness and liabilities of the Borrower to the RTC are secured by a pledge to the RTC of a security interest in certain collateral of the Borrower pursuant to the terms of the Borrower's Continuing Lending and Security Agreement with the RTC and other agreements or arrangements between Borrower and the RTC.

The Borrower, endorsers, and all parties to this Note hereby waive presentment, protest and notice of protest and nonpayment. This Note may be assigned or otherwise transferred by the RTC or any subsequent assignee or transferee. No delay or omission on the part of any holder shall operate as a waiver of any right or power of the holder hereunder. In the event default is made in the payment of this Note and an attorney is employed to enforce or collect this Note, the Borrower agrees to pay all costs and expenses of collection, including reasonable attorney's fees, or, to the extent the RTC uses the services of its in-house legal staff, the actual costs to the RTC of providing such legal services.

_____
(Depository Institution (Borrower))

_____
(Address)

_____
(City) (State)

_____
(Authorized Signature and Title)*

*To be signed in accordance with the borrowing resolution or certification of file at the RTC.

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RESOLUTION TRUST CORPORATION

Exhibit 4
to Appendix A
RTC Lending Circular No. 1

CONFIRMATION OF RECEIPT OF ADVANCE

(Association Letterhead)

_____, 1989

Resolution Trust Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Attention: Director of Funding Operations

Gentlemen:

This will confirm receipt by _____, of _____, _____ (the "Association") today of advances wired to account number _____ pursuant to our request confirmed by letter to you dated _____. The Association has agreed to be bound by all terms and conditions of the Continuing Advance and Security Agreement and by such terms and conditions as may from time to time be set forth in the RTC Lending Circular No. 1 and all relevant Appendices and Exhibits.

Sincerely,

_____
Authorized Signature

_____

_____, _____

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RESOLUTION TRUST CORPORATION

Appendix B
to RTC Lending Circular No. 1

RATE SCHEDULE

Interest will accrue on the outstanding unpaid principal amount of each loan from and including the date of such loan until such principal amount has been paid in full. The initial interest rate for payment of interest on each loan shall be equal to (i) the average rate (equivalent coupon-issue yield) established at the auction for United States Treasury Bills with maturities of thirteen (13) weeks most recently preceding the date of any loan by the RTC to extend liquidity funding to an institution plus (ii) fifty (50) basis points (0.50%). Thereafter, the interest rate for such loan shall be adjusted each Tuesday on a weekly basis for the period during which such loan is outstanding. Interest will be calculated on a simple interest basis using the actual number of days elapsed during each year or portion thereof and a calendar year of 365 or 366 days, as applicable. Interest payments for interest accrued on such loan shall be due and payable on the same date that the principal payment is due and payable.

Any loan extended by the RTC to an institution is payable on demand.

The purposes for which a loan may be made by the RTC to an institution is limited to loans for emergency liquidity needs, or to replace high cost funds, including:

(a) excessive or unanticipated withdrawals;

(b) operating expenses of the institution;

(c) meeting existing commitments of the institution; or

(d) meeting legitimate needs in the institution's local community where meeting such needs is essential to maintaining the value of the institution; or

(e) high cost funds.

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RESOLUTION TRUST CORPORATION

Appendix B
to RTC Lending Circular No. 1

RATE SCHEDULE

Interest will accrue on the outstanding unpaid principal amount of each loan from and including the date of such loan until such principal amount has been paid in full. The initial interest rate for payment of interest on each loan shall be equal to (i) the average rate (equivalent coupon-issue yield) established at the auction for United States Treasury Bills with maturities of thirteen (13) weeks most recently preceding the date of any loan by the RTC to extend liquidity funding to an institution plus (ii) twenty five (25) basis points (0.25%). Thereafter, the interest rate for such loan shall be adjusted each Tuesday on a weekly basis for the period during which such loan is outstanding. Interest will be calculated on a simple interest basis using the actual number of days elapsed during each year or portion thereof and a calendar year of 365 or 366 days, as applicable. Interest payments for interest accrued on such loan shall be due and payable on the same date that the principal payment is due and payable.

Any loan extended by the RTC to an institution is payable on demand.

The purposes for which a loan may be made by the RTC to an institution is limited to loans for emergency liquidity needs, or to replace high cost funds, including:

(a) excessive or unanticipated withdrawals;

(b) operating expenses of the institution;

(c) meeting existing commitments of the institution; or

(d) meeting legitimate needs in the institution's local community where meeting such needs is essential to maintaining the value of the institution; or

(e) high cost funds.

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RESOLUTION TRUST CORPORATION

Appendix D
to RTC Lending Circular No. 1

BORROWER IN CUSTODY OF COLLATERAL AGREEMENT

This appendix (the "Appendix") sets forth the terms of the agreement (the "Agreement") between a depository institution (the "Borrower") and the Resolution Trust Corporation (the "RTC") regarding pledges of the Borrower's assets to the RTC to secure the repayment of advances made by the RTC, pursuant to an arrangement whereby the RTC obtains physical possession of such pledged assets by sequestration on the Borrower's premises or by control of the RTC over the premises. To obtain advances under such an arrangement, a Borrower must execute and return a letter to this RTC in the form set forth in Exhibit 1 to this Appendix. The terms of this Appendix supplement the terms of the RTC Lending Circular No. 1 and the Continuing Lending and Security Agreement by which the Borrower must have agreed to be bound.

TERMS OF AGREEMENT

GENERAL

1. Any transactions made pursuant to the terms of this Agreement are subject to the provisions of this Agreement, and the RTC's Lending Circular No. 1, as amended from the time to time. TO THE EXTENT THAT TRANSACTIONS MADE PURSUANT TO THIS AGREEMENT ARE NOT GOVERNED BY THE FEDERAL LAW OF THE UNITED

STATES OF AMERICA, FEDERAL REGULATIONS, LENDING CIRCULARS OF THE RTC OR THIS AGREEMENT, THE TRANSACTIONS HEREIN ARE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

2. The collateral pledged to the RTC under this Agreement includes instruments, customer notes, real estate mortgages, securities and any other assets designated in writing by the RTC.

RIGHTS IN THE COLLATERAL

3. In consideration of the RTC's making an advance to the Borrower pursuant to the terms of the Continuing Lending and Security Agreement, and as security for the repayment of the advance and all other debts, liabilities, and obligations of the Borrower to the RTC, the Borrower grants to the RTC a security interest in and assigns and pledges to the RTC the collateral listed on the Schedule of Collateral (as described in paragraph 9) to be issued by the Borrower, together with any proceeds of the collateral (collectively the "Collateral"). The Borrower also assigns and grants to the RTC a security interest in any and all records and documents related to the Collateral including, but not limited to, appraisals or opinion of value, title insurance polices, abstract, and records of repayments.

4. The pledge of Collateral pursuant to this Agreement takes effect when the Borrower has delivered the Schedule of

Collateral to the RTC. The Borrower agrees to earmark or flag the Collateral and mark its records to show that the Collateral has been pledged to the RTC and is subject exclusively to the RTC's written orders and directions.

5. The Borrower authorizes the RTC, in the RTC's sole discretion, at any time, whether or not the RTC deems the Collateral adequate, to appropriate and apply any of the Collateral to any obligation of the Borrower to the RTC when payment is due. The Borrower also authorizes the RTC to charge any obligation of the Borrower to the RTC against any account balance standing to the Borrower's credit on the RTC's books when payment is due.

PLEDGE PROCEDURE

6. The Borrower agrees that any item of Collateral pledged hereunder is deemed to be in the possession of the RTC as though the Collateral had been deposited at the RTC's premises. The Borrower shall consult with the RTC in advance of any pledge of Collateral under this Agreement.

7. Upon demand by the RTC, the Borrower shall execute, acknowledge, endorse, and deliver immediately to the RTC or its designee such other assignments, agreements, participation certificates, notes, powers of attorney, and other documents of

any kind needed to effect the purposes of this agreement, and shall cooperate with the RTC and take any action that the RTC requests to enable the RTC to:

(a) record or otherwise perfect its security interest in the Collateral;

(b) dispose of any item of the Collateral; or

(c) otherwise secure the repayment of principal and interest of the Borrower's indebtedness to the RTC.

8. The Borrower shall provide a revised Schedule of Collateral and a statement of the current book value of the Collateral to the RTC every six months, or more frequently if alternative arrangements have been made with the RTC. Each such statement shall indicate the value of the Collateral after deduction of satisfactions issued during the preceding six months.

9. The Schedule of Collateral, incorporated herein by reference, must contain:

(a) The name of the state and county where any real property securing any collateral not pledged hereunder is located; and

(b) A description of each item of Collateral sufficient to enable the RTC to identify and evaluate the item in

accordance with reasonable commercial practice, including:

(1) the names of obligors or makers or the account numbers;

(2) the face value of each item;

(3) the current amount outstanding with respect to each item;

(4) the maturity date of each item;

(5) the total of all the Collateral;

(6) the total of the number of items comprising the Collateral; and

(7) any other information that the RTC deems necessary to properly identify the Collateral.

Upon request by the RTC, the Borrower shall supplement or revise the Schedule of Collateral and provide written reports or statements concerning the status of any item of the Collateral.

10. The Borrower shall not transmit a Schedule of Collateral or other notice with respect to this Agreement to the RTC without the manual signature or endorsement of a duly authorized representative of the Borrower. The Borrower agrees that any Schedule of Collateral or other notice issued hereunder binds it and its successors and assigns.

11. The RTC may inspect the Borrower's premises at which the Collateral is kept, as well as any item of Collateral, for the purpose of verifying the Schedule of Collateral and Borrower's compliance with the terms of this Agreement. Any such inspection may be made during the Borrower's regular business hours or at such other item as is agreeable to the Borrower. The RTC may also inspect, copy, and require delivery of any and all records and documents concerning the Collateral including, but not limited to, appraisals or opinions of value, title insurance polices, abstracts and records of repayments made.

12. A document assigned or pledged to the RTC under this Agreement that must be endorsed to perfect a security interest shall be endorsed or assigned to the RTC with recourse to the Borrower. The Borrower waives presentment, demand, notice of dishonor, protest, and notice of protest, and all other notices with respect to such a document.

WITHDRAWALS

13. If permitted by the RTC, the Borrower may release, withdraw or substitute items of Collateral, but must submit to the RTC a supplement to the Schedule of Collateral as soon as practicable thereafter. Upon demand by RTC, the Borrower must execute Appendix F to RTC Landing Circular No. 1 and must

withdraw and must provide substitutes for any items of Collateral which are delinquent or in default for more than 30 days. The Borrower agrees to notify the RTC immediately if Borrower's indebtedness should exceed the loan value of collateral remaining after withdrawals.

SURRENDER OF THE COLLATERAL

14. (a) The RTC may demand and take possession of the Collateral without prior notice to or the consent of the Borrower. The Borrower shall, upon request from the RTC, segregate all Collateral from all other collateral or assets in the possession of the Borrower.

(b) Upon receipt of instructions from the RTC to deliver any or all of the Collateral to the RTC, the Borrower shall surrender immediately (or as soon after demand as access to the Borrower's premises becomes available) to the RTC or its designee such Collateral, together with any relevant endorsements, assignments, or powers of attorney executed in blank by an authorized officer of the Borrower for the transfer or other disposition of such Collateral. The RTC is not responsible for the risk of loss of any Collateral until the Collateral is actually received by the RTC. The Borrower shall

arrange for the transportation of the Collateral to the RTC in the manner that the RTC requests.

(c) Unless the RTC notifies the Borrower to the contrary after taking possession of the Collateral in accordance with the provisions of subparagraphs 14(a) and (b) herein, the RTC shall pay the Borrower any proceeds that the RTC receives with respect to any complete or partial redemption, payment or sales or otherwise with respect to the Collateral, and any interest or dividends received with respect to the Collateral.

(d) Termination of this Agreement will not preclude the RTC from taking possession of the Collateral on the Borrower's premises or obviate the Borrower's duty to segregate the Collateral for the RTC's benefit or to allow the RTC to remove the Collateral from the Borrower's premises unless the RTC has received payment in full, in immediately available and finally collected funds, of all advances made by the RTC to the Borrower.

DEFAULT

15. If the Borrower defaults in the performance of any of its obligations under the terms of this Agreement including provision of RTC Lending Circular No. 1 incorporated by reference, the RTC may, at its option, without notice or demand, exercise any of the remedies available to it by law or reserved

by it under the terms of the Continuing Lending and Security Agreement.

RESPONSIBILITY OF BANK

16. Upon complying with the provisions of this Agreement and the applicable provisions of federal and state law, the RTC shall be relieved of and fully discharged from any liability or responsibility to any person with respect to the Collateral. The RTC shall, however, account to the Borrower or its successors or assigns for any Collateral and its proceeds actually received by the RTC or in the RTC's possession.

INDEMNIFICATION OF RTC

17. The Borrower shall exercise ordinary care with respect to Collateral pledged to the RTC under this Agreement and shall indemnify the RTC and hold it harmless from and against any damages, liabilities, costs, expenses (including reasonable attorney's fees and expenses of litigation), and any other losses incurred by the RTC in the course of, or arising out of, the performance of this Agreement or the pledge of the Collateral, other than any damages, liabilities, costs, expenses, or other losses incurred by the RTC as a result of the RTC's failure to exercise ordinary care.

Appendix D
to RTC Lending Circular No. 1

DISPOSITION OF COLLATERAL AFTER REPAYMENT

18. After repayment of an advance, the Collateral will be released in accordance with the provisions of paragraph 8 of Appendix A to RTC Lending Circular No. 1.

MISCELLANEOUS

19. The Borrower authorizes the RTC to file or record such documents as the RTC deems necessary to perfect its security interest. If the RTC so demands, the Borrower shall reimburse the RTC for any expenses incurred by the RTC in perfecting its security interest in the Collateral including, but not limited to, the cost of recording an assignment of mortgage, filing a financing statement, and obtaining a lien search. If the RTC so demands, the Borrower also shall reimburse the RTC for any expenses incurred by the RTC in assembling, transporting, safekeeping or managing potential collateral or collateral pledged under this Agreement, whether the Collateral is held by the RTC, the Borrower, or by a third party custodian.

20. The Borrower does not assign to the RTC the obligation to perform or not perform any act or forbearance with regard to the Collateral.

21. The failure of the RTC to insist upon strict performance of any of the terms of this Agreement or to seek to enforce the RTC's rights or remedies in the event of any default or breach shall not be deemed a waiver of any rights or remedies that the RTC may have, and shall not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

22. The Borrower acts as the RTC's agent in holding the Collateral but only for the purpose of securing advances to the Borrower and without any right of compensation from the RTC.

23. The Borrower shall notify the RTC immediately of any significant exceptions disclosed by an internal or external audit or by an examination of the Borrower's collateral position.

24. In the event of any inconsistency among the terms of this Agreement and the Schedule of Collateral, or other notices issued by the Borrower, the terms of this Agreement, as interpreted in any written instructions that the RTC may issue, prevail.

25. Unless the text requires otherwise, all terms used in this Agreement have the meaning specified in the Uniform Commercial Code in effect in the State of New York at the time the relevant pledge of Collateral is made.

26. This Agreement supersedes any previous agreement relating to custody of collateral by the Borrower and becomes

effective when the RTC receives a letter from the Borrower, in the form of Exhibit 1 to this Appendix, accepting the terms of this Agreement.

27. This Agreement is binding on the successors, assigns and legal representatives of the Borrower, and inures to the benefit of the RTC, its successors and assigns.

28. The Borrower acknowledges that this Agreement is and shall be effective upon execution by the Borrower and delivery to and acceptance hereof by the RTC and it shall not be necessary for the RTC to execute or otherwise signify its express acceptance.

TERMINATION OF THE AGREEMENT

29. (a) Either party may terminate this Agreement by giving written notice to the other party. When given by the RTC, the notice is effective immediately. When given by the Borrower, the notice shall be effective when received by the RTC. However, the rights and liabilities of the parties under this Agreement survive any termination of it until all the obligations of the Borrower to the RTC that arose before termination have been repaid in full. Before termination of this Agreement becomes effective, the Borrower shall, at its expense, deliver to the RTC any and all Collateral and copies of records concerning the

Collateral that the RTC requires to secure advances by the RTC that remain outstanding as of the close of the Borrower's business day on the day of termination.

(b) Notwithstanding anything to the contrary contained in this Agreement, upon termination of this Agreement the Borrower shall deliver to the RTC all Collateral in its possession that secures or secured an advance made to the Borrower through a Correspondent under the terms of Appendix C to the RTC's Lending Circular No. 1.

Appendix D
to RTC Lending Circular No. 1

IN WITNESS WHEREOF the undersigned duly authorized officer(s) of the Borrower have executed this Agreement and have affixed the corporate seal.

_____ (Date)

_____ (Name of Borrower)

_____ (Address)

(Corporate Seal)

_____ (Authorized Signature), (Title)*

*To be signed in accordance with the borrowing resolution or certification on file at the RTC.

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8/11/89

RESOLUTION TRUST CORPORATION

Exhibit 1
to Appendix D
Lending Circular No. 1

(Letterhead of Depository Institution)

LETTER OF AGREEMENT

(Date)

Resolution Trust Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Gentlemen:

In order to obtain advances from you and in consideration of your making such advances to us secured by our pledge to you of collateral that you will permit us to hold in safekeeping for you, we agree to be bound by the provisions of the RTC Lending Circular No. 1 and Appendix D to that Circular, as amended from time to time. We acknowledge that it is our responsibility to ensure that we have in our possession current copies of the Circular and Appendix.

_____
(Name of Institution)

By: _____
(Authorized Signature)* (Title)

*To be signed in accordance with the borrowing resolution or certification on file at the RTC.

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8/11/89

RESOLUTION TRUST CORPORATION

Exhibit 2
to Appendix D
RTC Lending Circular No. 1

Instructions for Warehousing of Collateral

No warehousing of collateral should commence until it is determined that all collateral which can be readily held by the Resolution Trust Corporation ("RTC") (generally securities) has been transferred or deposited with the RTC (or its designated agent).

Collateral that cannot be conveniently sent to the RTC may be kept in RTC custody on the premises of the depository institutions in accordance with an appropriate warehouse arrangement. The collateral that ordinarily is acceptable for use under the vault lease (warehouse) arrangement, listed in general order of preference, includes 1-4 family residential mortgages, multifamily mortgages, commercial and industrial loans of nationally recognized corporations, consumer installment loans and commercial mortgages as such other commercial paper as the RTC may agree to accept as collateral from time to time. Generally collateral should exclude all delinquent loans as well as any classified loans or loans for which the institution expects imminent repayment but the RTC may accept such loans as collateral or include such loans in a blanket security agreement. Loans secured by out-of-state property are acceptable collateral. If

additional collateral is needed and the above loan types have been exhausted, check with personnel from the RTC regarding acceptable collateral. At a minimum, the loan documentation required to be held under a warehouse arrangement should include the original note, and the original note and mortgage for real estate loans. Once the collateral has been segregated and listed (the list may consist of a trial balance if it contains the required information) on the assignment form, the collateral should be placed in a secure facility on the institution's premises which is to be leased to the RTC. If an entire vault could be leased, such an arrangement would facilitate control of collateral. Alternatively, a separate safe or locked box within a depository institution's vault may suffice. The legal requirements for an adequate field warehouse require that any space leased to the RTC be posted with a sign giving notice of the lease. The RTC must hold the key or combination to any vault, safe or lock box under its control and may change the lock or combination if necessary to exclude the depository institution from the leased space. The RTC should seal all locks or safes, and the depository institution may be given access to the collateral only under the supervision of a RTC employee. The RTC may not designate an employee of the depository institution as the RTC agent in charge of the field warehouse. In

addition, the RTC may not designate an examiner of another regulatory agency as its field warehouseman because of the statutory prohibition against an examiner's disclosure of names of borrowers or collateral for loans unless express permission in writing has been obtained from the Managing Agent or the appropriate regulatory agency (see 18 USC Section 1906).

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RESOLUTION TRUST CORPORATION

Exhibit 3
to Appendix D
RTC Lending Circular No. 1

LEASE

AGREEMENT OF LEASE, made as of _____, 198_, between _____, having an office at _____ ("Lessor"), and the Resolution Trust Corporation ("RTC") a corporation organized under the laws of the United States, having its principal office at 550 17th Street, N.W., Washington, D.C. ("Lessee"). Lessor hereby leases to Lessee and Lessee hereby hires from Lessor, _____ _____ _____ situated in the _____ of the area known as the official bank vault on the ___ floor of Lessor's premises at _____ (the "Property").

1. The initial term of this Lease shall be _____ months, commencing on _____, and terminating on _____. Lessee may extend the term of this Lease for additional terms of three months upon five days' notice to Lessor. Lessee may terminate this Lease during the original or any additional term upon five days' notice to Lessor.

2. Lessee agrees to pay Lessor the sum of Ten Dollars ($10.00) per month or fraction of a month as rent for the Property. Rent is payable in arrears on or before the last day of each month during the term of the Lease. All rental payments shall be made to Lessor at the address specified above.

3. Lessee shall use and occupy the Property to store and safeguard securities and other documents and valuables.

4. Lessor agrees to provide Lessee with complete and unrestricted access to the Property at all times during normal business hours and at such other times as Lessee may request on reasonable notice to Lessor.

5. Lessor agrees to furnish to Lessee combinations to any locks or devices securing the Property and any keys or other devices required to have access to the Property. Lessee may, at its option, change combinations or locks securing the Property and may add or substitute locks or seals of its choice. Lessee may post notice signifying that the property is under the control of the RTC, and may make reasonable alterations necessary to secure the material held in the Property.

6. Upon the termination of this Lease, Lessee shall return the Property in good condition, ordinary wear and tear excepted. Lessee may remove any of its personal property, but shall have no

obligation to remove any alterations Lessee may make pursuant to Paragraph 5 of this Lease.

7. Lessee shall have exclusive custody and control of the Property during the term of this Lease. Notwithstanding any reservations of rights to the Lessor to enter the Property, whether under the law of state in which the property is situated or otherwise, LESSOR SHALL NOT ENTER OR ASSUME CONTROL OF THE PROPERTY AT ANY TIME OR FOR ANY REASON WHATSOEVER WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSEE.

8. Lessee shall not be responsible for the payment of any taxes, assessments, license fees or other charge or fees imposed on the Property and under no circumstances shall Lessee be responsible for the payment of any monies except as set forth in Paragraph 2 hereof.

9. This agreement may be executed in any number of counterparts and by a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

Exhibit 3
to Appendix D
RTC Lending Circular No. 1

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

	THE RESOLUTION TRUST CORPORATION
Signature:_____	Signature:_____
Print Name:_____	Print Name:_____
Title:_____	Title:_____

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RESOLUTION TRUST CORPORATION

Exhibit 4
to Appendix D
RTC Lending Circular No. 1s

RECEIPT FOR COLLATERAL HELD
PURSUANT TO BORROWER IN CUSTODY OF COLLATERAL AGREEMENT

Name of Depository Institution _____ Address of Branch or Office _____

The Resolution Trust Corporation hereby acknowledges receipt from the above-named depository institution of the following securities, notes, bonds, mortgages or other instruments pledged as collateral for advances pursuant to a borrower in custody of collateral agreement/or held at the Resolution Trust Corporation.

Type of Collateral	Location - Office

Total Face Amount of Collateral (Unpaid Balance) _____

Received for Resolution Trust Corporation by:

_____
Authorized Signature

_____
Title

_____
Date

Acknowledged for Depository Institution by:

_____
Authorized Signature*

_____
Title

_____
Date

*To be signed in accordance with the borrowing resolution or certification on file at the RTC.

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8/11/89

RESOLUTION TRUST CORPORATION

APPENDIX F
to RTC Lending Circular No. 1

To be Submitted in Quadruplicate

APPLICATION FOR WITHDRAWAL OF COLLATERAL
Pledged as Collateral for Advances from the
Resolution Trust Corporation

Date: _____

TO: Resolution Trust Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Please release _____
(description) totaling $_____ as hereinafter listed in the schedule below which are held by you or in a field warehouse as collateral for advances by the Resolution Trust Corporation pursuant to a promissory note dated _____ for the original principal amount of _____.

Pledged on _____ Total Outstanding Unpaid Balance _____
Less This Withdrawal _____
New Total Outstanding Unpaid Balance_____

_____
Name of Depository Institution

_____
Address of Institution

_____
Authorized Signature* and Title

Receipt of above described
Collateral Acknowledged:

By: _____
Authorized Signature

*To be signed in accordance with the borrowing resolution or certification on file at the RTC.

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8/11/89

ATTACHMENT B

April 24, 1989

MEMORANDUM TO: S&L Distribution List

FROM: Louis E. Wright
Resolutions Group Manager
S&L Management Group

Louis E. Wright

SUBJECT: Resolutions

The purpose of this memorandum is to inform Managing Agents, Regional Coordinators and other interested parties about topics concerning the resolution process for troubled FSLIC-insured savings associations.

Loan, Securities, REO, Branch and Subsidiary Sales

The authority to sell loans, securities, REO and other assets has been delegated to Managing Agents, subject to appropriate oversight by Regional Coordinators, and the Planning and Operations Group Managers and their staffs. [redacted] The sale of branches and subsidiaries is contained in the memorandum titled "Instructions for Preparing Conservator Operating Plan," dated April 21, 1989. Names of interested acquirors for "pieces" of an association in conservatorship, including branches and subsidiaries, should not be referred to the Resolutions Group. [redacted] Names of individuals making inquiries for pieces of an association should be retained by Managing Agents for their use in making normal business decisions.

Due Diligence

As stated in my memorandum of March 23, limited due diligence will be allowed by interested acquirors after they have been prescreened by the Resolutions Group. Prescreening of insured depository institutions will be based on MACRO, CAMEL and BOPEC ratings by the institution's primary regulators (with further follow-up as necessary). Prescreening of public and private corporations will be based on audited financial statements and/or other evidence of financial resources. Prescreening of private investors will be based on sufficient evidence of their ability to recapitalize a troubled association. Once prescreened, the Operations Group will contact Managing Agents in order to schedule appropriate times for due diligence.

The level of due diligence to be allowed by Managing Agents is to be limited to a general introduction to the association including its senior management, its asset and liability mix, its subsidiaries, the market it serves including the deposit structure of its branches, and a small sample of performing and nonperforming assets. Due diligence should be scheduled with as little fanfare as possible in order to protect the confidential nature of the process.

In smaller institutions, it is envisioned that the limited due diligence should be performed by one or two people for one or two days. In larger institutions, up to three people for three days can be allowed by Managing Agents. This due diligence process is designed to allow interested acquirors an opportunity to confirm their interest but not provide sufficient information to make an informed decision on an acquisition or the level of financial assistance needed.

Negotiations

As stated previously, [redacted] with interested acquirors [redacted] entire associations are likely to take place until after legislation has been enacted and the Resolution Trust Corporation has set its policies and contracted with its agents. Therefore, Managing Agents should refrain from negotiating any specific transaction with any interested acquiror. Managing Agents should, however, feel free to discuss how FDIC has operated in the past with the understanding that the S&L resolutions process may be undertaken in the future very differently from how FDIC and FSLIC have operated in the past.

Unassisted Transactions

Any acquiror approaching a Managing Agent or a Regional Office about the possibility of a financially unassisted transaction should be referred to the local Federal Home Loan Bank. [redacted] transactions remain the jurisdiction of the primary Federal regulators. If Managing Agents are contacted by the Federal Home Loan Bank concerning an unassisted acquisition, they should be as cooperative as possible with the Federal Home Loan Bank and the potential acquiror by allowing full access to the books and records of the association. [redacted] [redacted] and let the primary Federal regulator handle unassisted transactions without concurrence or objections from the FDIC.

Proposals for Assistance by Associations in Conservatorship

Any proposal for financial assistance to facilitate the recapitalization or acquisition of an association in conservatorship developed by the institution or its shareholders should be allowed to proceed. However, as a general rule, Managing Agents should make it clear to the proponents that the financial resources of the association will not be used to compensate consultants, attorneys and others for their efforts in developing a proposal. Additionally, officers and employees of an association developing any such plan should be expected to work on such plans at times when their efforts do not interfere with their primary duties.

If Regional Coordinators have any questions concerning the above, please contact me at 202-898-8750. Managing Agents with questions should contact their Regional Coordinators.